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OVERSIGHT OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT OF 1986

HEARING

BEFORE THE

SUBCOMMITTEE ON
SUPERFUND AND ENVIRONMENTAL OVERSIGHT

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE IMPLEMENTATION OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT OF 1986 (TITLE III OF PUBLIC LAW 99-499, THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986)

MAY 26, 1988

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OVERSIGHT OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT OF 1986

THURSDAY, MAY 26, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room 406, Dirksen Senate Office Building, Hon. Frank R. Lautenberg (chairman of the subcommittee) presiding.

Present: Senator Lautenberg.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. The Subcommittee on Superfund and Environmental Oversight will come to order.

Today, the subcommittee holds the first congressional oversight hearing on the Emergency Planning and Community Right to Know Act. As an author of that law, I believe its successful implementation is a top priority.

The law was enacted in the fall of 1986. The program is in its second year. In examining implementation, we need to focus on the law's goals.

One goal is to develop a national emergency planning infrastructure for chemical accidents. That infrastructure should be designed to plan for and prevent chemical emergencies.

The second objective is to give citizens the right to know what chemicals are being stored and emitted in their communities. Back in December of 1984, Bhopal showed us the tragic potential of a chemical accident. When that was finished, 2,000 victims had died, and tens of thousands were injured.

Just last year, the EPA's Emergency Response Notification data base logged about 28,000 reports of hazardous substance releases. New Jersey accounted for 799, placing our State fifth on the list.

Emergency planning has high stakes. It means saving lives—lives of children in a school near a factory where a faulty valve releases toxic vapors into the air, lives of fire fighters who must rush into a smoldering building filled with deadly fumes, and lives of residents near an exploding factory whose homes are enveloped by a toxic cloud of carcinogens.

All these citizens deserve top notch emergency planning and response, and they all deserve a right to know what is happening. Our air, soil, and water are fouled by pollution. We do not have comprehensive national data that tells citizens what risks they face.

The Right to Know law will change that. Companies already have reported on the health effects and amounts of certain chemicals present at their plants.

On July 1, emissions reports from roughly 30,000 facilities are supposed to come into EPA. Companies from across the country will be documenting the pollutants they are releasing into the environment.

The goals of the law are clear. The question is, are those goals being realized?

Our investigation presents some troubling answers. EPA has estimated low compliance not only by regulated facilities but, in some cases, by States and local emergency planning committees.

Are we better prepared than in 1984 to prevent and respond to a Bhopal type of emergency? The answer may depend on where you live.

EPA estimates that possibly half of the required local emergency plans won't be completed by the October 1988 deadline in the law. Some States are doing very well, and some are not.

I have heard in my own State of New Jersey that just over half of the local emergency planning committees have been formed. Yet, it is these committees that have to develop these plans.

EPA also estimates that as few as 40 percent of covered plants may have met the law's requirements to provide notification about the presence of dangerous chemicals at the plant.

So, we are seeing some troubling patterns. The question is, why? Some might argue that the law needs to be relaxed. Many of these people probably thought the law never should have been written.

As the Senate author of the Right to Know law, let me be clear. We are not here to entertain suggestions for relaxing the law. We are here today to explore ways to make the law work.

EPA bears a heavy burden to make this program function. While, clearly, the law gives States and localities much to do, that mandate depended on a vigorous commitment by EPA.

That commitment is lacking. There are some very dedicated people at EPA, people who work long hours and care very deeply about the goals of this program, and people who worked hard to help us prepare for this hearing, but that doesn't excuse some very distressing EPA policies.

EPA, for example, has concluded that States bear primary responsibility for implementing and enforcing the emergency planning provisions of the law. Well, I have some news for this Administration.

Preparing for and preventing Bhopals is not a secondary duty for EPA. EPA must be an equal partner with States and localities. That is what the law requires.

EPA's emergency planning enforcement policy is also troubling. You might call it explosion first, questions later.

That strategy is to invite enforcement actions after releases and accidents have occurred, not before. EPA, apparently is considering targeting facilities that have failed to provide notification of accidental releases.

However, an enforcement strategy must be consistent with the law's goals. In this case, enforcement should be aimed at advancing actual emergency planning.

EPA's technical assistance for industry, States, and locals is lacking, too. The government must get out in the field and explain how to comply with the new law. EPA's efforts here also have been inadequate.

This has been a problem for developing local emergency plans, and it has been a problem for industries attempting to report on emissions.

The emissions reporting program has its share of problems. Its enforcement strategy is not comprehensive enough. EPA budget documents indicate that only 25 enforcement cases will be developed this year, and they will do only 116 actual compliance inspections. Now, that is compared to a potential universe of 30,000 facilities covered by the law.

But today isn't just about the problems. It is about solutions. Today isn't just about criticizing EPA. It is about exploring ways for EPA to do better.

In that spirit, I would like to describe some of my own recommendations which are summarized in the chart to my left. These recommendations are more fully explained in my written statement which will be included in the record. Looking at the program generally, EPA should expand technical assistance and serve as a compliance clearinghouse. They ought to improve regional capabilities. EPA should continue to push for enhanced coordination among offices involved in implementing the law. They ought to enhance enforcement manpower. They ought to keep the trade secrets regulation within the bounds of the law.

States and localities have a responsibility. They should encourage broad participation on both State emergency response commissions and local emergency planning committees. They ought to optimize enforcement tools under the Federal and State law.

Continuing with the emissions inventory requirements, EPA should adequately fund and implement quality assurance for emissions inventory data. They ought to broaden enforcement for emissions inventory non-compliance. They ought to prepare to use emissions inventory data for regulatory programs and make emissions data publicly available quickly on both a data base and by alternative means. They should develop the capability to respond to inquiries about emissions data.

On emergency planning, EPA ought to abandon this explosion first and questions later enforcement. They ought to continue and improve the release prevention study process. They ought to commit to an equal partner emergency planning policy. They should assist States and localities to develop data management.

The States and localities should get more detailed chemical inventory information. They ought to encourage submissions of lists of chemicals rather than MSD's to reduce paperwork.

Finally, the Administration should restore the $5 million emergency training program. And EPA, along with States and localities, should make chemical emergency planning an ongoing priority.

These are some of the proposals aimed at moving this program forward. I look forward to continuing this dialogue with our witnesses here today.

[Senator Lautenberg's written statement follows:]

STATEMENT BY FRANK R. LAUTENBERG
SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT
MAY 26, 1988

TODAY THE SUBCOMMITTEE HOLDS THE FIRST CONGRESSIONAL OVERSIGHT HEARING ON THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT. AS AN AUTHOR OF THAT LAW, I BELIEVE ITS SUCCESSFUL IMPLEMENTATION IS A TOP PRIORITY.

ENACTED IN THE FALL OF 1986, THE PROGRAM IS IN ITS SECOND YEAR. IN EXAMINING IMPLEMENTATION WE NEED TO FOCUS ON THE LAW'S GOALS.

ONE GOAL IS TO DEVELOP A NATIONAL EMERGENCY PLANNING INFRASTRUCTURE FOR CHEMICAL ACCIDENTS. THAT INFRASTRUCTURE SHOULD BE DESIGNED TO PLAN FOR AND PREVENT CHEMICAL EMERGENCIES.

THE SECOND OBJECTIVE IS TO GIVE CITIZENS THE RIGHT TO KNOW WHAT CHEMICALS ARE BEING STORED AND EMITTED IN THEIR COMMUNITIES.

BACK IN DECEMBER OF 1984, BHOPAL SHOWED US THE TRAGIC POTENTIAL OF CHEMICAL ACCIDENTS. WHEN IT WAS OVER, 2000 VICTIMS HAD DIED. TENS OF THOUSANDS WERE INJURED.

JUST LAST YEAR THE EPA'S EMERGENCY RESPONSE NOTIFICATION DATA BASE LOGGED ABOUT 28,000 REPORTS OF HAZARDOUS SUBSTANCE RELEASES. NEW JERSEY ACCOUNTED FOR 799, PLACING THE STATE FIFTH ON THIS LIST.

EMERGENCY PLANNING HAS HIGH STAKES. IT MEANS SAVING LIVES. LIVES OF CHILDREN IN A SCHOOL NEAR A FACTORY WHERE A FAULTY VALVE RELEASES TOXIC VAPORS INTO THE AIR.

LIVES OF FIRE FIGHTERS WHO MUST RUSH INTO A SMOLDERING BUILDING, FILLED WITH DEADLY FUMES.

LIVES OF RESIDENTS NEAR AN EXPLODING FACTORY, WHOSE HOMES ARE ENVELOPED BY A TOXIC CLOUD OF CARCINOGENS.

ALL THESE CITIZENS DESERVE TOP NOTCH EMERGENCY PLANNING AND RESPONSE.

AND THEY ALL DESERVE A RIGHT TO KNOW. OUR AIR, SOIL, AND WATER ARE FOULED BY POLLUTION. WE DO NOT HAVE COMPREHENSIVE NATIONAL DATA THAT TELLS CITIZENS WHAT RISKS THEY FACE.

THE RIGHT TO KNOW LAW WILL CHANGE THAT. COMPANIES ALREADY HAVE REPORTED ON THE HEALTH EFFECTS AND AMOUNTS OF CERTAIN CHEMICALS PRESENT AT THEIR PLANTS.

AND ON JULY 1 EMISSIONS REPORTS FROM ROUGHLY 30,000 FACILITIES ARE SUPPOSED TO COME INTO EPA. COMPANIES FROM ACROSS THE COUNTRY WILL BE DOCUMENTING THE POLLUTANTS THEY'RE RELEASING INTO THE ENVIRONMENT.

THE GOALS OF THE LAW ARE CLEAR. THE QUESTION IS: ARE THOSE GOALS BEING REALIZED?

OUR INVESTIGATION PRESENTS SOME TROUBLING ANSWERS. EPA HAS ESTIMATED LOW COMPLIANCE NOT ONLY BY REGULATED FACILITIES BUT IN SOME CASES BY STATES AND LOCAL EMERGENCY PLANNING COMMITTEES.

ARE WE BETTER PREPARED THAN IN 1984 TO PREVENT AND RESPOND TO A BHOPAL EMERGENCY? THE ANSWER MAY DEPEND ON WHERE YOU LIVE.

EPA ESTIMATES THAT POSSIBLY HALF OF THE REQUIRED LOCAL EMERGENCY PLANS WON'T BE COMPLETED BY THE OCTOBER 1988 DEADLINE IN THE LAW. SOME STATES ARE DOING WELL. OTHERS ARE NOT.

I'VE HEARD IN MY OWN STATE OF NEW JERSEY THAT JUST OVER HALF OF THE LOCAL EMERGENCY PLANNING COMMITTEES HAVE BEEN FORMED. YET IT'S THESE COMMITTEES THAT MUST DEVELOP THE LOCAL PLANS.

EPA ALSO ESTIMATES THAT AS FEW AS 40% OF COVERED PLANTS MAY HAVE MET THE LAW'S REQUIRMENT TO PROVIDE NOTIFICATION ABOUT THE PRESENCE OF DANGEROUS CHEMICALS AT THEIR PLANTS.

SO WE'RE SEEING SOME TROUBLING PATTERNS. THE QUESTION IS WHY? SOME MIGHT ARGUE THAT THE LAW NEEDS TO BE RELAXED. MANY OF THESE PEOPLE PROBABLY THOUGHT THE LAW NEVER SHOULD HAVE BEEN WRITTEN.

AS THE SENATE AUTHOR OF THE RIGHT TO KNOW LAW, LET ME BE CLEAR. WE'RE NOT HERE TO ENTERTAIN SUGGESTIONS FOR RELAXING THE LAW. WE'RE HERE TODAY TO EXPLORE WAYS TO MAKE THE LAW WORK.

EPA BEARS A HEAVY BURDEN TO MAKE THIS PROGRAM WORK. WHILE CLEARLY THE LAW GAVE STATES AND LOCALITIES MUCH TO DO, THAT MANDATE DEPENDED ON A VIGOROUS COMMITMENT BY EPA.

THAT COMMITMENT IS LACKING. THERE ARE SOME VERY DEDICATED PEOPLE AT EPA. PEOPLE WHO WORK LONG HOURS, AND CARE DEEPLY ABOUT THE GOALS OF THIS PROGRAM. PEOPLE WHO WORKED HARD TO HELP US PREPARE FOR THIS HEARING.

BUT THAT DOESN'T EXCUSE SOME VERY DISTRESSING EPA POLICIES.

EPA, FOR EXAMPLE, HAS CONCLUDED THAT STATES BEAR PRIMARY RESPONSIBLITY FOR IMPLEMENTING AND ENFORCING THE EMERGENCY PLANNING PROVISIONS OF THE LAW.

WELL I'VE GOT SOME NEWS FOR THIS ADMINISTRATION. PREPARING FOR AND PREVENTING BHOPALS IS NOT A SECONDARY DUTY FOR EPA. EPA MUST BE AN EQUAL PARTNER WITH STATES AND LOCALITIES. THAT'S WHAT THE LAW REQUIRES.

EPA'S EMERGENCY PLANNING ENFORCEMENT POLICY ALSO IS TROUBLING. YOU MIGHT CALL IT "EXPLOSION FIRST, ASK QUESTIONS LATER."

THE STRATEGY IS TO INITIATE ENFORCEMENT ACTIONS AFTER RELEASES AND ACCIDENTS HAVE OCCURRED--NOT BEFORE. EPA APPARENTLY IS CONSIDERING TARGETING FACILITIES THAT HAVE FAILED TO PROVIDE NOTIFICATION OF ACCIDENTAL RELEASES.

BUT AN ENFORCEMENT STRATEGY MUST BE CONSISTENT WITH THE LAW'S GOALS. IN THIS CASE, ENFORCEMENT SHOULD BE AIMED AT ADVANCING ACTUAL EMERGENCY PLANNING.

EPA'S TECHNICAL ASSISTANCE FOR INDUSTRY, STATES, AND LOCALS IS LACKING TOO. THE GOVERNMENT MUST GET OUT IN THE FIELD AND EXPLAIN HOW TO COMPLY WITH THE NEW LAW. EPA'S EFFORTS HAVE BEEN INADEQUATE.

THIS HAS BEEN A PROBLEM FOR DEVELOPING LOCAL EMERGENCY PLANS. AND IT'S BEEN A PROBLEM FOR INDUSTRIES ATTEMPTING TO REPORT ON EMISSIONS.

THE EMISSIONS REPORTING PROGRAM HAS ITS SHARE OF PROBLEMS. ITS ENFORCEMENT STRATEGY IS NOT COMPREHENSIVE ENOUGH. EPA BUDGET DOCUMENTS INDICATE THAT ONLY 25 ENFORCEMENT CASES WILL BE DEVELOPED THIS YEAR. AND THEY'LL DO ONLY 116 ACTUAL COMPLIANCE INSPECTIONS. THAT'S COMPARED TO A POTENTIAL UNIVERSE OF 30,000 FACILITIES COVERED BY THE LAW.

BUT TODAY IS NOT JUST ABOUT PROBLEMS. IT'S ABOUT SOLUTIONS. TODAY IS NOT JUST ABOUT CRITICIZING EPA, IT'S ABOUT EXPLORING WAYS FOR EPA TO DO BETTER.

IN THAT SPIRIT, I'D LIKE TO DESCRIBE SOME OF MY OWN RECOMMENDATIONS, WHICH ARE SUMMARIZED IN THE CHART TO MY LEFT:

LOOKING AT THE PROGRAM GENERALLY, EPA SHOULD:

1. EXPAND TECHNICAL ASSISTANCE AND SERVE AS A COMPLIANCE CLEARINGHOUSE.

   EPA SHOULD PROVIDE INCREASED TECHNICAL ASSISTANCE TO STATES, LOCAL EMERGENCY PLANNING COMMITTEES, AND INDUSTRY. SUCH ASSISTANCE SHOULD HAVE A PARTICULAR FOCUS ON EMERGENCY PLANNING AND EMISSION INVENTORY COMPLIANCE. EPA SHOULD BE A CLEARINGHOUSE FOR METHODS TO IMPLEMENT AND COMPLY WITH THE LAW.

2. IMPROVE REGIONAL CAPABILITIES.

   EPA SHOULD IMPROVE THE ABILITY OF ITS REGIONAL OFFICES TO IMPLEMENT THE LAW. EPA'S REGIONAL OFFICES SHOULD BE ABLE TO RESPOND TO REQUESTS FOR TITLE III ASSISTANCE AND INFORMATION FROM STATES, LOCALITIES, AND INDUSTRY.

3. **CONTINUE TO PUSH FOR ENHANCED COORDINATION AMONG OFFICES INVOLVED IN IMPLEMENTING THE LAW.**

   EPA HAS BEEN CONSCIOUS OF THE NEED TO COORDINATE AMONG OFFICES IMPLEMENTING THE LAW. THE AGENCY SHOULD CONTINUE TO PUSH THIS EFFORT NOT ONLY IN HEADQUARTERS, BUT IN THE REGIONAL OFFICES. OFFICES SHOULD WORK TOGETHER ON IMPLEMENTATION, INCLUDING COORDINATING ENFORCEMENT EFFORTS. OFFICES SHOULD ALSO CONSIDER USING A UNIFORM SYSTEM OF DOCUMENTING AND MONITORING IMPLEMENTATION EFFORTS AND ACTIVITIES.

4. **ENHANCE ENFORCEMENT MANPOWER.**

   EPA CURRENTLY HAS 11 FULL TIME EQUIVALENTS, BASICALLY 11 AGENCY POSITIONS TO ENFORCE THE LAW. EPA'S MANPOWER IS DISPROPORTIONATE TO THE BURDEN OF ENFORCING AMONG THE HUNDREDS OF THOUSANDS OF FACILITIES COVERED BY THE LAW.

5. **KEEP THE TRADE SECRETS REGULATION WITHIN THE BOUNDS OF THE LAW.**

   EPA'S TRADE SECRET REGULATION SHOULD NOT GO BEYOND THE LAW'S PROTECTIONS. THOSE PROTECTIONS ARE LIMITED TO CHEMICAL IDENTITIES, WHICH, AMONG OTHER THINGS, ARE NOT REQUIRED TO BE DISCLOSED OR MADE AVAILABLE UNDER ANY FEDERAL OR STATE LAW. WHERE IDENTITY IS WITHHELD, THE INFORMATION SUBMITTED MUST AFFORD MEANINGFUL INFORMATION FOR HEALTH AND ENVIRONMENTAL PROTECTION.

....

AND STATES AND LOCALITIES SHOULD:

6. **ENCOURAGE BROAD PARTICIPATION ON BOTH STATE EMERGENCY RESPONSE COMMISSIONS AND LOCAL EMERGENCY PLANNING COMMITTEES.**

   BROAD REPRESENTATION INCREASES THE POOL OF EXPERTISE AND THE RANGE OF VIEWS. THE RESULT IS INNOVATION AND WELL-TESTED, WELL-DEBATED APPROACHES, ESSENTIAL ELEMENTS OF TITLE III ACTIVITIES, SUCH AS EMERGENCY PLANNING AND DATA MANAGEMENT.

7. **OPTIMIZE ENFORCEMENT TOOLS UNDER FEDERAL AND STATE LAW.**

   PARTICULARY WHERE EPA FAILS TO PROVIDE ACTIVE ENFORCEMENT, AND EVEN IN COORDINATION WITH EPA ENFORCEMENT EFFORTS, STATES AND LOCALITIES SHOULD MAKE USE OF THE ENFORCEMENT TOOLS PROVIDED BY TITLE III, AS WELL AS UNDER SIMILAR STATE LAWS. THIS STRATEGY FILLS THE GAPS OF AN INACTIVE EPA ENFORCEMENT APPROACH, AND COMPLEMENTS A MORE APPROPRIATE ACTIVIST APPROACH.

....

CONTINUING WITH THE EMISSIONS INVENTORY REQUIREMENTS, EPA SHOULD:

8. ADEQUATELY FUND AND IMPLEMENT QUALITY ASSURANCE FOR EMISSIONS INVENTORY DATA.

   DATA IS ONLY VALUABLE IF IT IS ACCURATE AND RELIABLE. EPA MUST DEVELOP A COMPREHENSIVE METHOD TO QUALITY CONTROL THIS DATA. LIMITED QUALITY CONTROL MEANS LIMITED QUALITY. THE SUCCESS NOT JUST OF THE EMISSIONS INVENTORY EFFORT, BUT OF THE USE OF SUCH DATA FOR OTHER ENVIRONMENTAL PROGRAMS IS CONTINGENT ON ITS QUALITY.

9. BROADEN ENFORCEMENT FOR EMISSIONS INVENTORY NONCOMPLIANCE.

   EPA SHOULD GEAR ITS ENFORCEMENT STRATEGY TO COVER MORE VIOLATIONS, AND SHOULD INCLUDE EMPHASIS ON ENFORCEMENT AGAINST THOSE WHO WHO SUBMIT NO EMISSIONS FORMS AT ALL. CURRENT PLANS TO CONDUCT ONLY 116 COMPLIANCE INSPECTIONS AND DEVELOP 25 CASES IN 1988 UNDERSCORE LOW ENFORCEMENT GOALS. THE 1989 PROJECTIONS OF 100 CASES AND 475 INSPECTIONS ARE ALSO SMALL IN RELATION TO THE NUMBERS OF REGULATED FACILITIES.

10. PREPARE TO USE EMISSIONS INVENTORY DATA FOR REGULATORY PROGRAMS.

    EPA SHOULD INTEGRATE EMISSIONS INVENTORY DATA INTO OTHER EPA MEDIA OFFICES. EPA SHOULD USE THAT DATA TO ASSIST AND SPUR ENFORCMENT AND OTHER PROGRAMS, SUCH AS AIR TOXICS, WASTE REDUCTION, AND OCEAN POLLUTION EFFORTS.

11. MAKE EMISSIONS DATA PUBLICLY AVAILABLE QUICKLY ON BOTH A DATA BASE AND BY ALTERNATIVE MEANS.

    EPA'S DATA BASE MUST BE MADE AVAILABLE QUICKLY AND BE USER FRIENDLY, INEXPENSIVE, AND WIDELY AVAILABLE. EPA SHOULD NOT LET ITS SPRING 1989 DEADLINE FOR DATA BASE AVAILABILITY SLIP, AND SHOULD CONSIDER WAYS TO ACCELERATE THE EFFORT. EPA MUST ALSO EMPHASIZE MAKING THE INFORMATION AVAILABLE IN A MEANINGFUL WAY THROUGH NON-AUTOMATED MEANS.

12. DEVELOP CAPABILITIES TO RESPOND TO INQUIRIES ABOUT EMISSIONS DATA.

STATES AND EPA SHOULD DEVELOP STRATEGIES TO RESPOND TO PUBLIC INQUIRIES ABOUT THE HEALTH EFFECTS ASSOCIATED WITH EMISSIONS REPORTS. THOSE STRATEGIES SHOULD BE CRYSTALLIZED QUICKLY, GIVEN THAT EMISSIONS REPORTS ARE DUE IN ABOUT ONE MONTH. STATES WISHING TO TAKE THE LEAD IN RESPONDING TO CITIZEN INQUIRIES SHOULD DO SO. BUT WHERE STATES ARE NOT TAKING THE LEAD, EPA SHOULD BE READY TO RESPOND.

....

AND ON EMERGENCY PLANNING, EPA SHOULD:

13. ABANDON "EXPLOSION FIRST, ASK QUESTIONS LATER" ENFORCEMENT.

EPA SHOULD NOT LIMIT ITS EMERGENCY RESPONSE AND PLANNING ENFORCEMENT STRATEGY TO FAILURE TO NOTIFY ABOUT RELEASES OR ACCIDENTS. ENFORCEMENT SHOULD ADVANCE THE LAW'S MAJOR GOALS, WHICH INCLUDE EMERGENCY PLANNING.

14. CONTINUE & IMPROVE THE RELEASE PREVENTION STUDY PROCESS.

THE DRAFTS OF THE PREVENTION STUDY REQUIRED BY LAW, SUGGEST AN INADEQUATE PERCENTAGE OF SURVEYS RETURNED AND SITE VISITS. EPA SHOULD BE A TRUE CLEARINGHOUSE ON RELEASE PREVENTION, DETECTION, AND MONITORING. THIS WILL TAKE A CONTINUING AND MORE COMPREHENSIVE EFFORT THAN THE ONE LEADING UP TO THE REQUIRED REPORT.

15. COMMIT TO AN "EQUAL PARTNER" EMERGENCY PLANNING POLICY.

EPA SHOULD ABANDON ITS POLICY OF PLAYING A SECONDARY ROLE IN EMERGENCY PLANNING. EPA IS AN EQUAL PARTNER TO THE STATES AND LOCALITIES ON EMERGENCY PLANNING. THIS SHOULD BE REFLECTED IN EPA ALLOCATIONS OF RESOURCES.

16. ASSIST STATES AND LOCALITIES TO DEVELOP DATA MANAGEMENT.

EPA SHOULD ASSIST STATES AND LOCALITIES IN DEVELOPING DATA MANAGEMENT PLANS FOR THE PROCESSING OF DATA, INCLUDING THROUGH AUTOMATION ON BOTH THE STATE AND LOCAL COMMITTEE LEVEL.

....

AND STATES AND LOCALITIES SHOULD:

17. GET MORE DETAILED CHEMICAL INVENTORY INFORMATION.

STATES AND LOCAL COMITTEES SHOULD USE THEIR LEGAL DISCRETION TO OBTAIN THE MORE DETAILED CHEMICAL INVENTORY INFORMATION--SO-CALLED TIER II INFORMATION. THIS HAS MORE VALUE FOR EMERGENCY PLANNING AND RESPONSE. EMERGENCY PLANNERS SHOULD ALSO USE THE LAW'S BROAD AUTHORITY TO OBTAIN OTHER NECESSARY PLANNING INFORMATION.

18. ENCOURAGE SUBMISSION OF LISTS OF CHEMICALS RATHER THAN MATERIAL SAFETY DATA SHEETS TO REDUCE PAPERWORK.

STATES SHOULD ENCOURAGE SUBMISSION OF LISTS OF CHEMICALS, AND SHOULD CONSIDER WAYS TO PROVIDE INCENTIVES FOR THE LEGAL OPTION OF SUBMITTING LISTS AIMED AT CHEMICAL HEALTH EFFECTS RATHER THAN SUBMITTING MATERIAL SAFETY DATA SHEETS.

....

THE ADMINISTRATION SHOULD:

19. RESTORE THE $5 MILLION EMERGENCY TRAINING PROGRAM.

THE ADMINISTRATION SHOULD RECONSIDER ITS DECISION TO ZERO THE $5 MILLION EMERGENCY TRAINING PROGRAM, AND SHOULD SUPPORT CONGRESSIONAL ATTEMPTS TO PROVIDE SUCH FUNDS IN 1989. EMERGENCY TRAINING IS ESSENTIAL IN SAVING LIVES NOT ONLY OF EMERGENCY RESPONDER, BUT THOSE OF POTENTIAL VICTIMS OF ACCIDENTAL RELEASES.

....

AND FINALLY, EPA ALONG WITH STATES AND LOCALITIES SHOULD:

20. MAKE CHEMICAL EMERGENCY PLANNING AN ONGOING PRIORITY.

EPA MUST WORK WITH STATE EMERGENCY RESPONSE COMMISSIONS AND LOCAL COMMITTEES TO CONTINUE EMERGENCY PLANNING BEYOND THE 1988 DEADLINE FOR PLAN SUBMISSION. THE DEADLINE IS IMPORTANT. BUT SO IS THE NEED TO CONTINUE THE PLANNING EFFORT.

THESE ARE SOME PROPOSALS AIMED AT MOVING THIS PROGRAM FORWARD. I LOOK FORWARD TO CONTINUING THIS DIALOGUE WITH OUR WITNESSES HERE TODAY.

Senator **Lautenberg**. First, I would like to welcome Congressman Florio, a distinguished colleague from the State of New Jersey. Congressman Florio has been a champion of a cleaner environment for New Jersey and for the country, and his efforts have done much for such programs as Superfund and the Right to Know law that we are looking at today.

Jim, it is a pleasure to have you here with us, and I look forward to hearing your testimony.

STATEMENT OF HON. JAMES FLORIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. **Florio**. Thank you very much, Senator.

I am likewise pleased to be here with you. I have a prepared statement that I would like to put into the record, and I would like to summarize some of it.

I am very pleased to be here and to be associated with you. It is appropriate that you are having these oversight hearings, because there is no one in this Congress, House or Senate, who has had more to do with the enactment into law of this particular provision than you, and you ought to be commended for that effort.

The 1986 Superfund amendments, particularly the Right to Know provisions, really do signal a whole new approach to environmental protection, and we hope that it is going to be an approach which will be extremely productive.

Mr. Chairman, we had hearings which you may recall, and we had evidence presented to us that untold amounts of known and suspected cancer causing substances are released into the air every day with no restrictions. Studies link some 21 percent of U.S. lung cancer cases to air pollution.

As pollutants fly into our air, seep into our drinking water, and are dumped into the ground, we can be assured that the Community Right to Know provision will give us vital information on what it is that is out there. That knowledge will help us to clean up toxic pollutants.

If knowledge is power, as has been stated, those three little words that is, "right to know," are going to be extremely powerful.

July 1, 1988 will be a very important day. This is an important piece of legislation. I would go so far as to say, however, that I think section 313 is the most important of all of the provisions that are in this law.

On the fourth of July, we celebrate our nation's independence. On the first of July, we will celebrate independence from environmental ignorance. On that date, those who release certain amounts of toxic pollutants must report to the EPA, to State emergency response commissions, and to local groups the amount and the type of toxic pollutants they release.

For example, when we had hearings in Institute, West Virginia and found out that 12 pounds per hour of methylisocyanate, that is, the pollutant that killed the 3,000 people in Bhopal, were being released into the air per hour every day, you can rest assured that the people were extremely concerned about that, and the practices have changed as a result.

That is the approach that we expect to result in changes in traditional disposal policies that have been taking place in the industry. The Community Right to Know will radically transform the way that we approach toxic hazards. The Right to Know law will finally require industry accountability.

Everyone has the right to know what contaminants are in the air that they breathe. They have a right to know if they should fear a deadly chemical accident in their midst, and they have the right to know that someone has prepared an emergency response capability to deal with the problem that may occur when an accident does occur.

They have a right to take up with a local plant their concerns about the types of chemicals they are forced to breathe. It is an inevitable consequence of the information dissemination that flows from this legislation.

Some, I know, fear that this is going to produce extreme concern when people learn about what it is that is happening in their areas. I would say to those people that the open release of information to people is far safer than the secretive release of toxics into the air or into the ground.

Community Right to Know prods industry to produce information, but it also helps to create ways for concerned citizens to review that information, be aware of the risks, and take steps to reduce those risks and protect themselves.

The emissions inventory is significant for a number of reasons, not the least of which is that it should provide a springboard for efforts to reduce the deadly contaminants that pollute our environment.

Finally, I would like to make several points about this law and about the way that EPA will ensure compliance with it.

Many industries are comfortable with the July 1 deadline and have assured me that they can and will comply with it. There are a number of industries where compliance is uncertain. EPA estimates that there are 30,000 facilities covered by this requirement. However, they are candid enough to acknowledge the fact that that is not too terribly much more than a guess, that the universe of 30,000 is probably a relatively small percentage of the total parts of industry that are required to comply.

We can fully expect, I believe, the chemical industry to be in the forefront of compliance, but this law requires compliance from a host of other industries as well. They may not be as aware of, informed about, or diligent in complying with the provisions of this law.

I am not convinced that EPA has set aside the proper resources to enforce this law and to ensure compliance, as you have indicated in your opening remarks. The anticipated resources allocated by EPA to enforce this law are woefully inadequate. It is inconceivable that the 11 people that EPA projects to be involved in this program will be able to enforce the law on the 30,000 facilities that EPA has identified, much less the much greater universe that is probably appropriately involved in this legislation.

So, the efforts of States, local planning committees, and the public, potentially through citizen suits which are authorized, will become vitally important. Those people—citizens, States, and local organizations—will be the watch dogs to see to it that the chemical plant or the industrial facility down the street obeys the law.

It is an exciting and empowering concept that we have established in this law, and you, obviously, are to be commended for the role that you played in establishing this new approach to environmental protection that is reflected in this law.

It is equally important that we emphasize here today that July 1 is indeed a firm deadline, a deadline not to be shrugged off. I hope this hearing will be a message to anyone who might now be debating whether or not to bother to comply with the law, that at least the Congress is serious about this, that we mean business. The health of our people and the quality of our environment is entirely too important to ignore.

Senator, you have provided a very important public service today in this hearing, because this hearing may very well be the first effort that can be initiated to send that message out that we are serious. I am hopeful that across this country, interested groups and the media and the public officials who are involved will also join with you and other to send that signal out.

So, I want to commend you again and pledge my continued cooperation to you.

[Congressman Florio's written statement follows:]

Congressman James Florio

Testimony before Senate Subcommittee
on Superfund & Environmental Oversight

May 26, 1988

Mr. Chairman, the 1986 Superfund Amendments were a new beginning. For the first time, people will be told what is in the air they breathe and the water they drink. They will know the risks they face. I commend you for calling these hearings today and for letting me highlight some very important aspects of Community Right To Know.

I would like to also thank the Chairman for his leadership on the Community Right To Know provisions and for his diligence in calling this oversight hearing to keep on top of the program. These important provisions would not have become law without Senator Lautenberg's help.

Mr. Chairman, untold amounts of known and suspected cancer-causing substances are released into the air every day with no restrictions. Studies link 21 percent of U.S. lung cancer cases to air pollution. As pollutants fly into our air, seep into our drinking water, and are dumped into our ground, we can be reassured that the Community Right To Know provisions will give us vital information on what is out there. That knowledge will help us clean toxic pollutants.

Yes, if knowledge is power, then the three words, "right to know," are indeed mighty.

July 1, 1988 will be an important day. On the fourth we celebrate our nation's independence, but on the first, we will start to celebrate independence from environmental ignorance. On this date, those who release certain amounts of toxic pollutants must report to the EPA, state emergency response commissions and the local groups , the amount and type of toxic pollutants they release. For example, if Union Carbide in Institute, West Virginia releases 12 pounds of MIC an hour every day, the people who live nearby must be told.

Community Right to Know will radically transform the way we approach toxic hazards. For years, there has been in many communities an adversarial relationship between those who handle toxic chemicals and those who are exposed to them. Strange smells coming from the neighborhood plant, an odd bitterness in the drinking water, alarmingly high incidents of cancer and other diseases, have raised concern among people across the nation. But rarely did they get answers.

Corporate America would provide reassurances, and downplay the hazards. But, right or wrong, people continued to wonder. They would read about disasters like the toxic release that killed 2,500 in Bhopal, India, and they thought, "Can that happen here?" Communities found themselves ill-prepared to handle toxic chemical accidents because they did not know what hazards existed at a plant. Imagine trying to fight a deadly fire if you didn't know for sure what to pour on the flames. That's what we've been up against.

Hearings I held in Institute, West Virginia revealed that another Bhopal could, indeed, happen here. We found that releases of toxic pollutants occured on a regular basis with no accountability and no controls.

The Community Right To Know legislation will finally require industry accountability. Everyone has a right to know what contaminants are in the air they breathe; they have a right to know if they should fear a deadly chemical accident in their midst; they have a right to plan their emergency reponse accordingly. A right to take up with their local plant their concerns about the types of chemicals they are forced to breathe or drink.

Some suggest this might produce fear. I say the open release of information to people is far safer than the secretive release of toxics into the air. Community Right To Know prods industry to produce information. But it is also helps create ways for concerned citizens to review that information, be aware of risks and take steps to reduce those risks and protect themselves.

The emissions inventory is significant for a number of reasons. Not least of which, it should provide a springboard for efforts to reduce the deadly contaminants that pollute our environment.

Finally, I would like to make several key points about this law and about the way EPA will ensure compliance with it. Many industries are comfortable with the July 1 deadline and have assured me that they can comply. But there are a number of industries where compliance is uncertain. EPA estimates that there are 30,000 facilities covered by this requirement.

I am not convinced that the EPA has set aside the proper resources to enforce this law and ensure compliance. In its fiscal 1989 budget request, EPA said it needs only three fulltime people in Washington office and eight in regional offices to work on enforcement over the next two years. It is inconceivable that 11 people will be able to enforce the law on 30,000 facilities nationwide.

So, the efforts of states, local planning committees and the public, through citizens suits, become vitally important. They will be the watchdogs who see to it that the chemical plant down the street obeys the law. It is an exciting, empowering concept.

It is equally important that we emphasize here today that July 1 is indeed a firm deadline -- a deadline not to be shrugged off. I hope that this hearing will be a message to anyone who might now be debating whether or not to bother. We mean business. The health of our people and the quality of our environment are too important to ignore.

Thank you.

Senator **Lautenberg**. Thank you, Congressman, for that statement.

We are declaring, jointly, that we are committed to the enforcement of a law that took much effort, much negotiation to get it into place. And there is much anxiety across the country. You raised the question of whether or not we are triggering excessive fear or concern. Well, I would rather err on that side and at least know that we have done what we are committed to do. That is to protect the people in our communities as much as possible.

And we have industry people who want to help. We have States that want to help. It just needs to be pushed along, and I am hopeful that at the conclusion of this hearing, we will have a record of testimony that helps us assist EPA and the other parties to administer this, law to move the program along so that when we do get to July 1, we are seeing a serious effort to protect our communities.

Mr. **Florio**. Senator, I used the word "springboard" in my remarks, and what I was making reference to was that the information that will flow from the July 1 reports, I believe, will help to create a climate in this Congress to say nothing of across the country that is going to be conducive to dealing with the unfinished business of environmental pollution, particularly in the area of air emissions.

As you know, there is legislation that has been pending, unfortunately, for a long period of time dealing with ozone, dealing with acid rain, dealing with the hazardous air pollutant section of the Clean Air Act, section 112. There is legislation that I have introduced regarding resource recovery, that is, solid waste incinerators—and emissions. All of those pieces of legislation should be dealt with.

I am convinced that when this information is disseminated to the American people as to what it is that is going on, the cumulative impact of concern about all of these things could and hopefully will mobilize the Congress and the American public to move in these areas that are long over-delayed.

The other night, as you know, Governor Dukakis was in northern New Jersey, and I had the pleasure of being with him as he landed at Newark Airport and we went to a day care center in Cranford, New Jersey. As you know through your knowledge of the geography, you are required, therefore, to go by exit 13 of the turnpike.

The windows were down in the car. Senator, we now have a potential President who is aware of the problems that this bill is designed to address, and I made a point of discussing this matter in that conversation.

I am convinced, to use that one specific example—I have gone by there and you have gone by there—when the reports come out from all the facilities in that area as to what it is that is occurring, what it is that is being emitted into the air, I suggest there is going to be a call for action that is not going to be able to be denied.

It is long overdue, and your initiative in this bill is finally going to get someone to pay attention to that particular problem, and I think there are probably comparable problems around the country that have not been addressed that now will be addressed.

Senator **Lautenberg**. Thank you very much. I thought perhaps you were going to say that the windows were down on the car so that Governor Dukakis could hear the cheers of the crowd. You didn't finish the statement.

As a matter of fact, I was near exit 13, which is the exit into the very heavily industrialized area which contains chemical plants. Within some companies, there have been efforts to cooperate with the community to try to contain and prepare for emissions.

We had a drill the other day with the local emergency response officials that went very well. More important than the specific result was the fact that they called attention to the fact that this had to be in place, that communities had to get on with this task. The companies were very cooperative, and we had a good drill there.

As you are aware, the Durenberger-Lautenberg air toxics bill explicitly calls on EPA to use emission data from Title III here. So, we hope it will be a springboard, and we look forward to continuing to work with you, and perhaps in the remaining months of the current Administration, we will be able to persuade them as well that dealing with this problem is in the best interests of the country. It is not only politically appropriate, it is also appropriate for the well being of the citizens that inhabit our country.

Thank you very much, Congressman.

Mr. **Florio**. Thank you very much, Senator.

Senator **Lautenberg**. We will call on Mr. Smith, Dr. Poje, and Mr. Rodenhausen.

We welcome you. Thank you for joining us. Since this is an oversight hearing, I would ask you please to stand and raise your right hand, because we do require that you take the oath.

[Witnesses sworn.]

Senator **Lautenberg**. I would like to give a special welcome to two fellow New Jersey, Pete Smith and Mr. Rodenhausen. Pete is the very dedicated president of the Fire Fighters Association of New Jersey, and I have worked with him in the past and look forward to continuing to work with him.

Mr. Rodenhausen is here on behalf of CMA, the Chemical Manufacturers Association. He is also a vice president of Hoechst Celanese and is based at their Somerville facility.

Before we begin, I want to point out that we are going to be pressed for time, and I would ask you to each complete your statements in five minutes. This red light will indicate when that takes place. We do have a provision for you to submit your full written testimony for the record.

So, first, I would ask Pete Smith if you would give your testimony.

STATEMENT OF PETER F. SMITH, PRESIDENT, FIRE FIGHTERS ASSOCIATION OF NEW JERSEY

Mr. **Smith**. Thank you, Senator Lautenberg.

I want to express my deep appreciation from the Fire Fighters for the effort that you have given to this legislation and the amendments and in holding this hearing today.

My name is Peter F. Smith. I am president of the Fire Fighters Association of New Jersey, AFL-CIO and affiliated with the International Association of Fire Fighters.

I am also chairman of the Right to Know Advisory Council in New Jersey. We advise the New Jersey Departments of Health and Environmental Protection on implementation of New Jersey's Right to Know law. In this capacity, we also are the advisory council to the State Emergency Response Commission, SERC.

Fire fighters are at great risk when responding to chemical accidents or fires. We are the first emergency personnel on the scene in most situations and have to make snap judgments as to what action to take first. A mistake in judgment could threaten the lives and welfare of fire fighters and nearby residents and result in the loss of valuable property.

Fire fighters' awareness to the seriousness of chemical accidents and fires became very visible after the Chemical Control fire in Elizabeth, New Jersey on April 21, 1980. Chemical Control was a toxic waste dump that burned for hours and days.

The International Association of Fire Fighters requested the National Institute for Occupational Safety and Health to conduct a health hazard evaluation for the fire fighters involved at Chemical Control. Three hundred emergency workers, mostly fire fighters, had medical screening. Sixty-eight percent had nose and throat irritations, thirty-seven percent coughs, thirty-six percent suffered shortness of breath, twenty-eight percent contracted a skin rash, and twenty-one percent experienced dizziness.

The reason I bring this up is because Chemical Control had every imaginable chemical you could think of on that site. The results are really devastating.

Six to eight hours after the fire, emergency workers, mostly fire fighters, continued to complain of symptoms, some for as long as seven to ten days. As of today, some forty Elizabeth fire fighters who fought that fire have cancer or other serious illnesses.

Just recently in Berkeley Heights, New Jersey, an explosion in a chemical laboratory killed three workers and injured another. This recent chemical emergency demonstrates once again the need for access to industrial chemical information.

Title III information is extremely valuable in addressing and evaluating the risks inherent in the previously mentioned disasters and in other incidents that are waiting to happen. Title III information, when available and used, will allow fire fighters to know exactly what hazardous and toxic chemicals are present on any industrial property.

Section 311 and 312 require that facilities submit critical information to local fire departments. This information will allow for proper planning before an incident happens.

One of the positive things that title III created in New Jersey is better cooperation between the Departments of Health, Environmental Protection, and the emergency management section of the Division of State Police.

As far as the Environmental Protection Agency's role, we have to have better cooperation. The cooperation is not there. The LEPC's aren't being structured, and I think they have to be more aggressive in getting the States and the local municipalities to form the LEPC's.

In New Jersey, they have done it with the old civil defense numbers, and I have been on the record as opposing that. I would rather do it in a regional capacity.

In summation, I believe SARA title III is a valuable benefit to fire fighters and first responders. However, to make it work effectively, more funding has to be secured for mandatory—and I stress mandatory—training programs. Funding has been allocated to develop training, but more must be secured to deliver it.

Thank you.

Senator LAUTENBERG. Thank you very much, Mr. Smith.

Dr. Poje.

STATEMENT OF GERALD V. POJE, ENVIRONMENTAL TOXICOLOGIST, NATIONAL WILDLIFE FEDERATION

Dr. POJE. Thank you, Senator.

I must say, although I am not a citizen from the State of New Jersey, I did live in Staten Island for a while, and you are very familiar with Staten Island.

Thank you for the invitation to address you today. My name is Gerald Poje. I am an environmental toxicologist with the Environmental Quality Division of the National Wildlife Federation.

I thank you for the opportunity to address you today, and I also thank you for the leadership that you have shown in not only passing this landmark legislation but in calling this hearing to assure that there is visible and secure oversight over how this program is being implemented.

Title III is an issue that confronts the nation as a whole, and its importance is present every day across the nation. Let me take a couple of examples that give us a reason why we really need to implement this law as rapidly as possible.

On May 4, 1988, the community of Henderson, Nevada was rocked by a series of powerful shock waves when an ammonium perchlorate explosion erupted at a nearby Pacific Engineering plant. The accident, the origin of which is still under investigation, killed 2 people, injured at least 250 others, and destroyed a neighboring factory. Shock waves from the blast, one of which registered 3.5 on the Richter scale in Pasadena, California, shattered windows for miles around, blew automobiles into ditches, and ruptured underground gas lines, resulting in an estimated $73 million in total damages.

The smoke cloud billowing from the explosion and ensuing fire carried numerous toxics into the atmosphere, including lead oxide and hydrogen chloride. The National Weather Service tracked the cloud as far as Salt Lake City, over 350 miles away from the accident site, where it was estimated to be 15 miles long and 6,000 feet thick.

Less than 24 hours after the Pacific Engineering accident in Nevada, residents of Norco, Louisiana were jarred from their sleep by a massive petrochemical explosion at the local Shell Oil refinery. The blast ruptured a catalytic cracker which converts crude oil to gasoline. Seven people perished in the accident, and forty-two were injured, four critically.

Two days before, Roger Fowler, manager of the Shell Chemical plant in Gismar, Louisiana and spokesperson for the Ascension, Louisiana Community Awareness and Emergency Response group, assured residents during an interview with a Baton Rouge paper about air emissions and the title III program that the threat of chemical accidents in the State was low due to the safety precautions taken in chemical plants.

These are not isolated incidents. Data compiled by New York's Attorney General show an increasing rate of chemical accidents. In addition, EPA's preliminary assessment of chemical accident preparedness as required under section 305(b) of SARA show gaping holes in emergency planning at individual plant facilities as well as in surrounding communities.

While many individuals in EPA, State and local government, organized labor, public interest groups, and industry have worked diligently to implement title III, a tremendous increase in the effort must occur before adequate emergency planning and community right to know is a national reality. In particular, the National Wildlife Federation, which works in concert with many public interest groups in the Working Group on Community Right to Know, recommends five areas for national focus, and I must say that many of these are the points you have already raised.

Number one, public education and involvement must be increased. Citizens must be informed of their title III rights. The effectiveness of State emergency response commissions and local emergency planning committees to support public involvement in title III must be evaluated and improved.

Technical expertise must be available to conduct and review hazard assessments and safety audits at these facilities.

Number two, accountability for implementing title III must be improved. EPA should assess whether the SERC's and LEPC's are functioning effectively to improve chemical safety. Steps must be taken to ensure that reporting of title III data is accurate and comprehensive, and information needs to be computerized and disseminated to a wide audience. Public access must be assured.

Number three, comprehensive enforcement must be ensured. EPA must assume the major role in enforcing all title III provisions. Increased chemical engineering inspection capability must be developed within the agency, and training of agency personnel and State and local enforcement officials must be assured.

In addition, because such an emphasis has been placed by the agency and States to date on the role of citizens in enforcing title III, we believe that education on citizen suit provisions should be provided by the agency.

Number four, EPA needs a long-range plan. It has been 20 months since we have begun implementing title III. Now is the time to really focus in on the agency on what we are going to do for the long term: better coordination at headquarters and the regional offices, a single integrated implementation plan, and better coordination with State and local governments.

Finally, title III's budget must match its objectives. Improving chemical accident preparedness and disseminating information to reduce chemical risks from routine emissions are prevention strategies that pay. Title III's budget should be expanded to ensure delivery on many items that are in short supply to this landmark legislation.

Thank you.

Senator LAUTENBERG. Thank you very much, Dr. Poje. Again, we have your full statement, and it will be in the record.

Now, I would like to call on Mr. Rodenhausen for your testimony. Welcome to the subcommittee.

STATEMENT OF GEORGE A. RODENHAUSEN, VICE PRESIDENT FOR ENVIRONMENTAL HEALTH AND SAFETY AFFAIRS, HOECHST CELANESE CORP., ON BEHALF OF THE CHEMICAL MANUFACTURERS ASSOCIATION

Mr. RODENHAUSEN. Thank you very much.

Good morning. My name is George Rodenhausen. I am Vice President for Environmental Health and Safety Affairs at Hoechst Celanese Corporation, as you mentioned, headquartered in Somerville, New Jersey. I am appearing on behalf of CMA, the Chemical Manufacturers Association, where I serve as Chairman of the title III Coordinating Group and the Health and Safety Committee.

We, as you, Senator, support the implementation of title III and are working hard to make title III work. I would like to give you an idea of some of the things that we are doing to help the implementation process.

Over three years ago, we put in place a program called "Community Awareness and Emergency Response" which goes by the initials C-A-E-R. CAER is a forerunner of the type of community involvement in emergency planning that is included in title III. Under the CAER program, CMA members established emergency planning groups in hundreds of communities across the country. Many of these groups have become their community's local emergency planning committee under title III.

Secondly, we have put in place a program called the "Air Quality Control Program" to address both accidental releases and long-term continuous releases. Under this program, on a voluntary basis, our companies have identified emissions of concern, evaluated the impact on communities, and made reductions where appropriate.

Finally, we have also instituted a program we call the "Waste Minimization Program" which formalizes the long-term trend to reduction of emissions in the chemical industry. Indeed, we have found that preparation of the section 313 reports has helped that process by highlighting additional opportunities for waste reduction.

For example, last week I learned about a plant that identified an additional 240 tons of toluene emissions coming from tanks that it was able to reduce by installing condensers. This was a result of filling out the 313 forms.

These three programs, the CAER program, the Air Quality Control Program, and the Waste Minimization Program, have given the chemical industry a sound basis for compliance with title III. In addition, we have taken a very active role in trying to educate industry on the requirements of title III.

We have put out several publications, some of which you have seen. We have the "Risk Communication Guide," the "Community Awareness Workbook," a "Manager's Guide to Title III"—all of which are directed at facility managers and available to anyone in industry who wants to use them.

We have also put out a flyer for the general public on emergency planning and community right to know which we are distributing widely.

We have also conducted seminars and conferences across the country, some in connection with EPA and with the backing of approximately 40 trade associations through the Council of Chemical Association Executives.

We recently surveyed our members to find out what impact these initiatives are having. We are confident that the level of compliance with title III will be very high in the chemical industry. At the same time, however, we are finding that it takes about 8 person-years in each company to fill out the section 313 forms.

We expect that most of our member companies will go beyond compliance. In particular, virtually all of our companies have a program to explain title III to their employees, and to local emergency planning committees, and an even larger percentage have a program to explain it to their customers. Most importantly, virtually all of our companies are planning to communicate the section 313 data directly to local communities and not force them to go through EPA and the States.

With regard to section 312 inventory reports, we find that 80 percent of our members have given the tier 2 reports, which are the chemical specific reports, instead of or in addition to the tier 1 general category reports.

I cannot predict the level of compliance outside the chemical industry, but I would make one comment. If there is a problem in this area, it may be due in part to a fairly common mischaracterization of title III as a law that applies exclusively to the chemical industry. Many companies outside the chemical industry continue to be unaware that title III applies to them.

I think EPA has done a credible job, given the time tables they face, but I would make three additional suggestions.

First, EPA needs to play a continuing educational role beyond July 1. In this respect, it is important that attention be shifted to include all the industries covered under title III.

Second, EPA must announce soon a clear and comprehensive enforcement strategy which coordinates and includes both compliance education and enforcement.

Third, EPA, of course, must find a way to make the toxic release inventory data easily available to the public. However, in addition, we feel the public must have access to health effects data and risk assessment information to help them understand the significance of the numbers they see. We believe EPA has a substantial resource of health effects information available to it, and it would be extremely helpful if they would collect that information and make it available to the public in a useful form.

In doing this, the agency should be careful to conduct a peer review or quality assurance check on the information so that the public has some assurance that it is accurate.

In conclusion, we view title III as an opportunity to build better relationships with our local communities and to show that the industry has acted responsibly and is acting responsibly in the management of its facilities.

Thank you very much.

Senator LAUTENBERG. Thank you very much, Mr. Rodenhausen.

I am pleased to have the members of the CMA demonstrate their interest by virtue of your testimony and some of the activities that you have described, including those that appear to go beyond, as you suggested in one example, the requirements. We are pleased to see that, and we want to continue to foster cooperation.

How do we get the CMA knowledge and experience out to other industries? You mentioned that title III does not apply just to the chemical industry, and that is true. Do you have any suggestions?

Mr. RODENHAUSEN. On our initiative, I think industry can do a large part of that. We are making our materials available to other industries through trade associations, and we are encouraging our members to do it through their relationships with customers. That is probably about all we can do.

I think, beyond that, EPA has to play an important role in educating the balance of industry.

Senator LAUTENBERG. We are pleased to see that, and we would encourage you to continue with that activity.

Pete, would the Fire Fighters, in your judgment, be willing to take on the potential paper flow challenges that we are going to get possibly in title III emergency response information? Is that something they deem worth doing? Are they willing to work with us?

Mr. SMITH. I think the fire services are more than willing to work with the paper. We are doing it in New Jersey now with New Jersey's right to know law, and it is working.

Senator LAUTENBERG. Dr. Poje, what is your assessment of EPA enforcement strategy on the emergency planning and emissions inventory provisions?

Dr. POJE. I think the statistics were quoted this morning, and there is quite a bit more to be done on enforcement from EPA than has been done to date. One of the things that concerns me is the thought that perhaps EPA will take the impression that there are certain provisions of the law that can be passed on to the States and localities to ensure compliance with the title III provisions.

It is my belief that EPA holds a major responsibility for enforcing title III, particularly right now in its early phases of implementation. EPA needs to show the national leadership to really assure that enforcement goes to all provisions of the law, both the emergency notification provisions as well as the planning provisions, and then the compliance with the right to know provisions and the 313 inventory.

EPA has broad authority under section 326 of the law for administrative civil as well as criminal enforcement activities.

Senator LAUTENBERG. How would you assess their regional capabilities?

Dr. Poje. I think right now—and I guess it is very difficult for any individual to hold a complete view of all the regional activities—there is a division of activities at the regional level as well as at the headquarters level, and we have yet to see or to hear from all of our participating members of the working group about any coherent enforcement strategy or implementation strategy coming through the regional offices.

Senator Lautenberg. So, it is fair to say that you do not think that EPA has met the obligations that it has. It has not made the commitment of the resources and has not offered the vigor that this is going to require to get into place.

Dr. Poje. Right. I think I would sort of look to EPA's own survey completed in February of this year from the regional offices and was available in draft form that less than 70 percent of the more than 3,500 LEPC's were functioning. Ten States had no data by which to evaluate their LEPC performance. Only 26 States attempted to predict LEPC compliance with the October 1988 deadline for submission of local emergency plans.

In addition, while approximately 37,000 facilities were in compliance nationwide, compliance estimates within States varied from 5 to 70 percent for even the 302 notification of a facility that it is subject to the emergency planning provisions. And similar types of statistics are available for looking at the compliance rates in various States with other provisions of the law.

So, it is quite clear that there are problems out there. EPA's enforcement strategy which has to support the compliance with the various provisions really had not been a motivating force at this stage of the game.

Senator Lautenberg. What guidelines would you give EPA as it tries to develop its trade secrets regulation?

Dr. Poje. I think that on the issue of trade secrets, title III really provides the best angle that we have right now on making information about chemical usage in our society available to the public. It has very tight regulations on trade secrets, and members of the Working Group on Community Right-To-Know have been diligently pursuing these very issues. I would be more than happy to make that information available to you as to what they have to do on this.

However, the importance to the people of having the right to know, to have access to the information about what chemicals are used in their vicinity and what the nature of the dangers are of the emissions of those chemicals clearly can, as Congressman Florio said, act as a springboard for local communities to feel a sense of control about the quality of their environment.

It is essential for EPA, as it addresses the regulations on trade secrets, that they be very cognizant of the fact that shrouding the data sets in false claims of trade secrecy will undermine the entire sense of public awareness and public willingness to work with the title III provisions and make their communities much safer environments.

Senator Lautenberg. But you would agree that companies have a right to protect their trade secrets?

Dr. Poje. Where there are legitimate claims for protecting their trade secrets, yes. We would not want to undermine the competitive advantage of a particular facility for reporting particular information about their chemical processing, but we clearly believe that the trade secrecy requirements under title III require protection in name only of the chemical, not in the properties of that chemical and its endangerment to public health or the environment.

Senator LAUTENBERG. We thank each of you for your excellent testimony, and we reserve the right to submit further questions to you for the record.

Mr. SMITH. Senator, can I make one comment?

Senator LAUTENBERG. Yes, please do.

Mr. SMITH. On your emergency planning points up there, 13 through 20, you are right on target there, especially with number 13, abandoning EPA's philosophy of explosion first and ask questions later. That has to change.

Senator LAUTENBERG. Thank you very much, Mr. Smith. Thanks to each of you.

The next panel now is Ms. Buchanan, Mr. Brown, Mr. Birns, and Dr. Jorge Berkowitz.

I would ask that you please stand and take the oath.

[Witnesses sworn.]

Senator LAUTENBERG. Please be seated. I want to welcome this panel.

We are committed to cooperating with all States in working for a better environment, and, in particular, we are pleased to see these representatives from New Jersey.

Dr. Berkowitz is New Jersey's Director of Environmental Quality, and we look forward to hearing the perspectives that New Jersey and other States have on title III.

Once again, let me remind you that because of the shortness of time, we would ask you to limit your oral testimony to five minutes. Again, the record is open to receive your full text.

We will start with Dr. Berkowitz, and I would like you to commence.

STATEMENT OF JORGE H. BERKOWITZ, DIRECTOR, ENVIRONMENTAL QUALITY DIVISION, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Dr. BERKOWITZ. Mr. Chairman, my name is Jorge Berkowitz. I am the Director of the Division of Environmental Quality within the New Jersey Department of Environmental Protection, and I would like to thank you not only for the opportunity to provide these comments but for your leadership in this very important area.

In July of 1986, our department underwent a major reorganization. The department moved to strengthen its emergency response program and invigorate its community right to know efforts.

These programs were joined with our newly formed toxic catastrophe prevention program and united to form a comprehensive program that we like to call our "community safety element" within our department.

These efforts were believed to be very important for New Jersey. Our State is unlike most others. We are geographically small, but we are the most densely populated State in the nation. We have a large, mature chemical industry. New Jersey employs more people in its chemical industry than any other State.

A disproportionately large percentage of our population lives in close proximity to chemical facilities. The department receives an average of 750 reports per month of various environmental incidents. Approximately 500 of these involve hazardous materials, and over 60 are significant enough to warrant a departmental emergency response.

Therefore, chemical safety, prevention, and preparedness is of utmost importance to our citizens and to the department.

It was with more than a passing interest that New Jersey learned of the mandates and requirements of title III in October of 1986. Having a model community right to know program and a well developed emergency management network, New Jersey decided to build upon these existing programs to meet the requirements of title III.

The spirit of title III has been termed the "democratization of chemical information," a concept to which we in New Jersey have subscribed for some time. The law is not, in our opinion, a catastrophe prevention law, nor is it a community right to understand law, but it is an important Federal law which is profoundly significant to communities in which chemical facilities are located.

From the outset, it was our intent to merge the requirements of the community right to know provisions in title III with the provisions of New Jersey's right to know program. It was our fervent hope that combining our program with the mandates of title III would be easy.

Our hope was one linked to practicality. Indeed, the problems and havoc that would be caused by imposing a separate and distinct Federal right to know program as well as a State right to know program upon our regulated industry would have been profound. The cry of over-regulation and duplicative regulatory programs could be well anticipated and, perhaps, deserved.

Therefore, we worked hard with the United States Environmental Protection Agency to make the requirements of the two programs as synchronous as possible.

I would briefly like to focus on some of the issues that cause us the most concern involved in the title III program. The first is funding.

Funding is required at all levels, local, State, and Federal, if serious, earnest implementation of title III is to occur. As you are too aware, there has been no money allocated to title III, and the implementation has come out of the agency's hide as well as the hide of the local governments.

Coordination and prioritization of title III within EPA causes us some concern as well. One difficulty in dealing with the Environmental Protection Agency on title III is that the law is managed by different offices within EPA. The potential exists that EPA will treat and represent title III initiatives as disjointed, non-integrated, separate activities. This could impose significant mistrust in the public which anticipates a comprehensive, earnest program in attempting a democratization of chemical information.

New Jersey has worked directly and productively with EPA headquarters. We believe that, in the rush to meet the regulatory deadlines, however, the regions have not been well integrated into the implementation strategies.

Coordination within EPA and between EPA and the States is vital to the overall success of this program.

Additionally, we are concerned with the long-term commitment of EPA towards the implementation of title III. We know that at the regional level, title III activities are not priority activities. EPA must give spirit and leadership if this law is to take hold at a national level.

One area where the States are significantly counting on the productivity of EPA is the delivery of the 313 data base. We need it, and our citizens demand it. If EPA does not provide us with this data base in early 1989, the State will be forced to provide it on its own at a cost of approximately $200,000.

We are concerned about the use and misuse of 313 data. The 313 data is useful for regulatory agencies as a means to evaluate programmatic activities and as an aid to identify additional efforts and strategies needed to control and possibly regulate important environmental released.

However, the temptation to misuse the data is seductive. The data should not be used, in our opinion, for risk assessment. It is too crude, and it is too ill-defined, in many cases. However, the data can be used for risk characterization.

The 313 data base could be a central data base for all media programs if the media programs constrain the reporting requirements according to the 313 data base. We would encourage EPA to do so. It is shameful not only at the Environmental Protection Agency level but also at State regulatory agencies the multiplicity of data bases that we have that can't communicate with one another.

Another issue that causes us some concern is section 305. In 305 the study required EPA to report to Congress in the spring of 1988 on the status of current technological capabilities to monitor, detect, and prevent significant releases of extremely hazardous substances.

Having reviewed the report, we are of the opinion that it is inconclusive. We encourage EPA to evaluate the merits offered by New Jersey's Toxic Catastrophe Prevention Act which might benefit other States and EPA in formulating their strategies to prevent Bhopal reoccurrences.

We hope this information which we have provided is useful to the oversight committee as you evaluate the effectiveness and implementation of title III programs. Title III has set the stage for much improved emergency response planning and hazardous substances information sharing, but this is only an initial step.

Continued support and leadership must be offered by the United States Environmental Protection Agency if title III has a chance at reaching its proposed potential. We in New Jersey are committed to making that happen, and we look forward to working cooperatively with EPA.

Thank you for the opportunity.

Senator LAUTENBERG. Thank you very much, Dr. Berkowitz.

We will take Mr. Birns next. Welcome, Mr. Birns. You are from Kansas?

Mr. BIRNS. Yes, Mr. Chairman, although I used to live in Willingborough, New Jersey, so I am very familiar with the State.

Senator LAUTENBERG. Did you? My goodness, everybody did. Everybody claims New Jersey heritage. We are glad to see you.

STATEMENT OF KARL F. BIRNS, RIGHT-TO-KNOW MANAGER, KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Mr. BIRNS. I wish to thank you very much for the opportunity to address the Senate committee regarding the Kansas emergency planning and community right to know program.

I am the senior staff person to the Kansas Emergency Response Commission. I also serve as the program manager for right to know within the Kansas Department of Health and Environment.

I have had the pleasure of speaking with many of my counterparts from other States over the last few years. We have compared notes on title III, and we have found a spectrum of various problems that the States do have to address in implementing this mandated Federal legislation.

In the State of Kansas, we feel we have successfully addressed some of these problems, but we, too, continue to face others. We have learned by experience that Title III can be done. It will take time and may even need to be modified or enhanced in the future.

Title III will work if we want it to work. I think, to summarize, title III is a state of mind. It will work if we do want it to work.

Rather than go through my testimony, I would like to draw your attention to the last three pages which are a summary of some of the accomplishments we have done in Kansas over the last year.

First of all, I would like to note that Kansas does have a statute, KSA 65-5701, which implements the Federal legislation in our State. It has a number of interesting features. Besides tracking all the Federal legislation so, in essence, we are implementing the Federal program, it designates the Division of Emergency Preparedness to do the emergency planning and oversight of the local committees, it establishes a State commission, and it designates the Department of Health and Environment to receive the reports under 302, 311, 312, and 313 and to maintain the public data bases.

In addition, there are two other key provisions. It established a fee authority so that we can raise money to pay for the program, and it set up under State authority equivalent enforcement to the Federal authorities in the Federal Right to Know Act.

In addition, because of a lucky chance of fate, our legislature had been reviewing right to know legislation at the time SARA was signed. We were able to get on board with enabling legislation and a budget act at the same time. So, our State program was budgeted in fiscal year 1988. I think that has been extremely useful in helping us get a head start on this program.

We have separate programs within the Department of Health and Environment and in DEP that are dedicated to title III. These are people that have the time to make the program work.

We have set up our local emergency planning committees. We have done it on a county basis. All 105 counties have local emergency committees, and they are functioning.

We have even had the Division of Emergency Preparedness develop model plans, one for an urban county, Wyandotte County which is Kansas City, Kansas and one for a rural county, Washington County, which can be used by the other counties as a guide in complying with the FEMA NRT-1 guidance. These are not black boxes, fill in the blanks but, rather, working plans that can be used to help them out.

In addition, we have put tremendous emphasis on what we call the outreach program. When title III came down, we realized that it was going to need a great effort to educate the reporting facilities and the public of both the benefits and the requirements of this legislation.

There was a void there that we felt had to be filled. EPA had not provided very much guidance other than the Title III fact sheet. Initially, we found that the fact sheet was not giving the kind of information we wanted to our public, so we prepared a series of pamphlets which are in readable English, as we like to think of them, for businesses, agriculture, public institutions, emergency responders, and citizens.

We have a right to know newsletter that goes out to all the local planning committees and to the health departments. In our State in the last year, our Division of Emergency Preparedness has organized 165 training courses for local planning committees and local emergency responders.

To assist facilities in complying with the title III forms, we have produced our own State form for 302 and for 311 lists. We have produced a guidance document to help facilities comply with those sections.

We are an agricultural State. We have worked very closely with our extension service and with the Department of Agriculture. Because so many farmers and other agricultural users had difficulty in interpreting hazardous chemical information and translating that into chemical products that they find on the shelf, we prepared a summary of registered pesticides and livestock products which is an easy reference. Our extension service prepared another one which ties into NPRS which is the national data base on pesticide products.

We have worked closely with our chamber of commerce and other trade groups in developing our fee regulations. The structure was originally based on a 100 percent payment for the program. The State Emergency Response Commission approached the Governor, recognizing that title III provided benefits to citizens at large as well as to the facilities, and we have now, at the Governor's recommendation, reduced the fees by fifty percent. So, we will have a mixture of 50 percent general revenue supporting the program.

We have worked very closely with the industry and all the other proponents in the program. I think this program has been viewed in the State of Kansas is one that is in everybody's interest, particularly industry that has chemicals that would be the first affected if there is a chemical release. There is a pollution exclusion on liability insurance coverage. Many of these facilities don't have coverage any more if anything such as a chemical release occurs. Emergency responders are also the ones who are the most impacted by title III.

We feel that the program would work, it should work, and, in Kansas, it is working.

I would very briefly raise two issues—I see my red light is on.

Senator LAUTENBERG. Go ahead.

Mr. BIRNS. I am on an EPA committee looking at section 313 implementation. There are two issues that have come up there.

One which Jerry Poje mentioned is the possibility that we have to maintain some working relationship with EPA in how trade secret is applied. In the EPA handbook which they just gave me a draft of and I was reading on the airplane last night, there is a potential that where there is a conflict between the release of health and environmental information and the possibility that that may disclose chemical identity, the current agency guidance would protect the chemical identity.

I think we have to be careful that this is judiciously applied, because public availability health and environmental effects data is necessary. I am in a health department. If we have a health effect and we don't know that those chemicals at a facility represent that health effect, without that knowledge, we can't go back to the facility and find out what chemicals are there. We need that information.

In addition, there is a question which has come up on the continued working relationship between the States and EPA. When SARA was first signed, EPA did organize a State work group on title III. That group became defunct about four months later. Now, EPA has initiated new work groups through NGA. We think it is extremely important that the States be part of an ongoing dialogue with EPA in developing policy and developing regulations. Not just after they come out in the Federal Register but at the time they are being thought through. We think that many of the problems that regulations may present can be dealt with early on rather than after they are in place.

I thank you very much.

Senator LAUTENBERG. Thank you, Mr. Birns.

Mr. Brown, we invite you to give your testimony and before you begin, I would like to mention that due to a conflict in schedules, Senator Warner will be unable to attend today's hearing. He has submitted a statement which will be entered into the record at this point.

[Senator Warner's statement follows:]

John Warner

STATEMENT BY SENATOR WARNER
SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT
HEARING ON EMERGENCY PLANNING AND
COMMUNITY RIGHT TO KNOW ACT OF SARA
MAY 26, 1988

Mr. Chairman, I would like to take this opportunity to welcome Robert Brown, Safety and Emergency Coordinator for Hopewell, Virginia who will testify on Panel II.

As the Committee will hear from Mr. Brown and Assistant Administrator Porter, Hopewell is one of the first Local Emergency Planning Commissions in the nation to have an approved Emergency Response Plan in compliance withe the Superfund Title III provisions.

I commend Hopewell for their aggressiveness in preparing their plan and I hope their experiences will serve to assist other Planning Commissions in preparing their emergency response plans in a timely manner.

Unfortunately, because of the tragic chemical accident that occurred in Hopewell in 1975 which resulted in hundreds of gallons of Kepone spilling into the James River, the City knows first-hand of the need to be fully prepared to protect its citizens and natural resources from such devastating accidents.

Even today, Virginia is still recovering from this accident as the James River was just opened for commercial fishing this spring.

Mr. Chairman, I must also state that I have heard from many Virginia communities who tell me that it will not be possible for them to have a completed emergency response plan by the October, 1988 deadline because of the enormous amount of information collection that is required under Title III.

I am told that compounding the exhaustive paperwork requirements is the reality that no funds have been or appear likely to be available to assist localities.

Mr. Chairman, I look forward to the testimony that will be presented today.

I hope the Committee will hear some suggestions from these expert witnesses on ways the implementation of Title III may be improved to reduce the paperwork burdens on localities, and to increase the effectiveness of the emergency plans and to fulfill the intent of the Community Right To Know provisions.

John Warner

May 25, 1988

Questions for EPW Assistant Admin., Win Porter

1. Dr. Porter, I have heard numerous complaints from county officials that the Emergency Planning and Community-Right-To-Know Act is overly burdensome because of the extensive paperwork requirements.

Can you comment on the Department's experiences with working with State and local governments on the reporting requirements of Title III?

2. Do you have any recommendations to facilitate the goals of Title III, while providing some relief from the exhaustive information collection and dissemination that is required under the Act?

3. In Virginia, I am told that citizens have been reluctant to serve on the Local Emergency Planning Commissions (LEPC) because they believe they could be held personally liable if the Commission could not meet the time deadlines required in the Act.

To address this issue the Commonwealth of Virginia has agreed to provide liability insurance for Local Emergency Planning Commissions. I am advised, however, that this is an expensive proposition - costing approximately $45,000 per LEPC. In Virginia, there are 108 LEPCs.

Do you know if this has been a problem in other states? Should the Federal government provide assistance to address this problem?

STATEMENT OF ROBERT BROWN, SAFETY AND EMERGENCY COORDINATOR, HOPEWELL, VIRGINIA

Mr. Brown. Mr. Chairman, I would like to thank you for the privilege of coming before this subcommittee. I would like to say that I am not from New Jersey; I am from Virginia.

Senator Lautenberg. That is not what got Mr. Birns those extra two minutes, I assure you.

Mr. Brown. My name is Robert Brown. I am a full-time local emergency services coordinator for the City of Hopewell, Virginia. The city is approximately 120 miles south of Washington, D.C. and borders on the James and Appomattox Rivers. The population is approximately 24,100. We have 11.3 square miles of which we have 2.5 square miles of chemically based facilities.

Pioneering in the field of emergency management is not new for the City of Hopewell. The city has been on the cutting edge of many programs in the Commonwealth ranging from hazardous materials training to multi-jurisdictional hazardous material exercises.

A new addition to this list has recently emerged, that being the airborne chemical emergency preparedness.

On November 13, 1986, the City of Hopewell became the first jurisdiction in the Commonwealth to develop and exercise an airborne hazardous substance plan. Hopewell's airborne hazardous substance plan was initiated following the distribution of the Environmental Protection Agency's air toxic strategy in January of 1986.

The city met with industry to analyze extremely hazardous substances in the community. Through the assistance from the State and cooperation from area industries, the city was able to develop a contingency plan for airborne hazardous substances.

A joint effort by Hopewell and the State Department of Emergency Services provided a plan that has served as a prototype for other jurisdictions in the State. This level of emergency planning for toxic airborne chemicals was prompted by the 1984 disaster in Bhopal, India.

The City of Hopewell has a history of being known as the chemical capital of the south which was highlighted by the kepone incident and pollution of the James River in the mid-1970's. After this unfortunate incident, the city changed its image from a chemical polluter to a leader in chemical emergency preparedness planning.

In 1977, city officials and industry met for the first time to discuss emergency management. As a result of this particular meeting, the Hopewell Industrial Safety Council was formed which is now the local emergency planning committee. This council has been meeting regularly since 1978.

When the Community Right to Know Act of 1986 became law, the City of Hopewell and the Hopewell Industrial Safety Council had very little to do to be in compliance. Examples of accomplishments in the city prior to the act are as follows:

An emergency planning committee had been formed and meeting;

Plans were developed;

Plans were being exercised annually;

Material safety data sheets were on hand at the local government level;

Extremely hazardous substances were identified;

Hazardous materials training for first responders was being conducted to include joint training with fixed facility shift supervisors;

Transportation routes were identified;

Facility coordinators were appointed;

Emergency communications systems were developed; and

A public information program was written to include the appointment of a public information officer.

The Hopewell Industrial Safety Council is currently working on the following projects to promote the Community Right to Know Act:

Currently being developed is an 8 to 10 minute video presentation on the Hopewell community awareness program to be shown primarily to churches, schools, civic groups, and local cable viewers.

Printing of 30,000 brochures on the Hopewell community awareness to be mailed directly to the local residents.

Annual training programs on hazardous materials response between the Hopewell Fire Department and local industry, primarily the shift supervisors at local industry.

Early warning system to alert the community in the event of an extremely hazardous substance release from a fixed facility.

My concerns are as follows:

The local jurisdiction is caught up in a web among the requirements of the Environmental Protection Agency and the Community Right to Know Act with the Federal Emergency Management Agency and funding, planning, and direction, and the Occupational Safety and Health Administration and the Hazardous Communications program and the Community right to Know training for individuals under the act.

As a result of this, it becomes very frustrating as a coordinator of emergency services and a member of two local planning committees to understand why federally funded planners at the State level cannot assist local jurisdictions with such a critical emergency preparedness program.

My second concern is why no funds are available to help small cities, towns, and rural jurisdictions that have no resources available to even start a planning process. I feel very fortunate to work for a city which funds emergency preparedness programs to include the Community Right to Know Act, but I must say we learned the hard way, a way that I do not wish on any jurisdiction in the future.

In conclusion, I would like to say that the Community Right to Know Act of 1986 is, in my estimation, a very important piece of legislation which can open many doors at the local level to build a solid relationship and emergency preparedness program between the local government, the transporter, the handler, and the manufacturer of hazardous substance.

Thank you, sir.

Senator LAUTENBERG. Thank you very much, Mr. Brown. That is a good example of what can be done. As you said, it resulted as a consequence of tragedy in your community, but we certainly can learn from what has taken place there.

Ms. Buchanan?

STATEMENT OF SANDY BUCHANAN, MEMBER, OHIO EMERGENCY RESPONSE COMMISSION

Ms. BUCHANAN. Thank you, Senator.

I have hardly ever even been to New Jersey, but Ohio always finds itself second to New Jersey in things like hazardous waste generation, and we are happy to keep it that way.

I would like to outline for you this morning a couple of examples of how Ohio has implemented title III and also go through some of our hopes for changes at the Federal level.

Ohio has tried its best to make use of the tools available in title III first, I think, and most importantly, by setting up a broad composition of members on the State Emergency Response Commission and the local committees.

I am a member of the State Emergency Response Commission. Also, I am one of the four environmental advocacy representatives, representing the Ohio Public Interest Campaign, a statewide citizens group. We have found that both the State and local committees have benefitted very strongly by strong enforcement and have been able to literally generate hundreds of volunteer hours and a broad range of expertise from a number of people.

It has also been very important that title III preserve the rights of States and localities to have their own local right to know laws. Our commission has benefitted greatly by many of our people in Ohio who are experts because of the local right to know laws lending their help to the State.

In the information management area, Ohio has tried to make the information manageable and accessible. We have been successful through some clear directives and some outreach to receive 90 percent lists as opposed to MSDS's in the 311 and inventory information that has been extremely important.

We believe we have about 50 percent industry compliance at this time. We do seem to have received more forms than any other State in the country, but we expect to receive forms, we hope, from about 8,000 industries overall.

In the funding area, Ohio did provide a general revenue fund allocation for the first two years of the program, a $600,000 allocation. We have developed a fee proposal looking at the Kansas proposal and some others which is pending in enabling legislation which should generate, if it passes, about $3 million a year which would go a little more than half to the local committees and the rest to State agencies.

Ohio has tried to coordinate with the local emergency planning committees, providing training and providing guidance in how to do the plans. We have found some, I think, innovative results at the local level, particularly in some of our larger counties. Cuyahoga County and Franklin County which are Cleveland and Columbus have both developed questionnaires for industry, taking advantage of the 303(d)(3) authority under the law, and I have made those available as part of my testimony to you, some information about that.

We have found that in the emergency response area, title III has resulted in better coordination, better evaluation, and innovative planning at both the State and the local levels.

I would like to outline several concerns we have about the Federal level. First of all, we have seen very little activity at the regional office. Just recently, Region V did appoint two people to serve and give some assistance on title III, but that is certainly not enough for the size of Region V, and it has happened a little late in the program.

We have found that we are relying on U.S. EPA for some things. The State has used its own initiative, is developing its own data base for 311 and 312, but the State is going to wait for the U.S. EPA data base on 313.

As was mentioned earlier, if that does not happen quickly, we all will be in very bad shape. We now hear that it may not be ready until June of 1989. That will leave citizens like ourselves trying to go through stacks and stacks of paper trying to figure out how to make the best use of the 313 data.

Clearly, there is a need for more technical assistance, as you have recommended, from U.S. EPA and for a clearinghouse to allow States and localities to learn from each other's experiences.

We also would like to see some changes in some FEMA policy. As was just mentioned, some of the existing FEMA grants which are going out which are being used by local disaster service agencies are not allowed to be used for title III. Particularly since we have many local disaster service folks serving as the title III personnel in the localities, it seems a real waste of resources not to use that.

We have seen very little outreach from U.S. EPA. Speaking as a representative of a citizens group, I did attend a meeting with U.S. EPA over six months ago in which there were plans for a citizens' guide book and various other tools for citizens, but to my knowledge, none of those has yet become available.

We also are all waiting for the IBM compatible computer program which is supposed to be used for local planning efforts. It still has not become available from U.S. EPA and, of course, the plans are due in October of 1988.

Finally, of course, I would like to mention the need for funding. There is a problem. Clearly, that is one of the reasons for U.S. EPA's lack of help in this area. U.S. EPA has very little funding, and I think that is behind some of the problems at the regional office. As well, there is a need for support for the State and localities.

Thank you.

Senator LAUTENBERG. Thank you very much, Ms. Buchanan.

Obviously, the four of you agree on some things. Let me ask each of you, has EPA's technical assistance been adequate to meet State and local needs in your States?

Ms. BUCHANAN. Senator, I think there has been—what assistance has been made available has been helpful, for example, the technical guidance documents. Ohio received, I believe, one copy from the State, but Ohio went out and copied several hundred for the local committees.

Our State EPA has experienced some frustration with not getting the help from the Federal level they could use, and we are all, of course, starting on this program together, and as much help as we could get from the Federal level—any help that is offered can be used, and certainly more help is needed.

Senator **Lautenberg**. So, while helpful, is it fair to say not adequate?

Ms. **Buchanan**. Certainly not adequate, and some of the documents that have been produced certainly could be made more user friendly and more easily understandable by these local committees who are mostly volunteers working very hard but not necessarily all technical experts.

Senator **Lautenberg**. Any of the others on the panel? Mr. Birns?

Mr. **Birns**. Mr. Chairman, we found that it has been woefully inadequate, and it has caused not just a problem getting information out on the program but, as in Ohio, most of the title III personnel are volunteers. One of the things we have found with the volunteers is that if you can't give them information, if you can't give them the mechanism to learn what is expected of them and to get the information to their constituencies, then they feel like they are out there hanging with the responsibility and no resources.

If nothing else, the outreach program gives them the information and the tools to work with, and, in some ways—we have public service announcements that go out on radio and TV. If you are on a local planning committee and you are driving in your car with some other folks and that service announcement goes off and you can just point to the radio and say that is the program I am involved with, it gives them a lift, some public recognition. It gives them a reason for doing what is expected of them.

I think that is a very, very important element here. It is a pat on the back that says we are all working together.

Dr. **Berkowitz**. Senator, if I could comment, one of our concerns is, again, as I stated in my testimony, the misuse of 313 information. It would be very helpful if EPA got out front and began to identify the quality of the information that 313 is going to give us and not only the use of the information but how not to use the information.

There is going to be a potential for that information to be refined and put into risk assessment models and come up with numbers that mean absolutely nothing. We are looking to EPA to get out front on that issue.

Senator **Lautenberg**. How about the regional role? Ms. Buchanan, you were critical about the adequacy of support from the regional office. Do you want to say anything more about that?

Ms. **Buchanan**. Well, one thing I might mention is that our Ohio EPA personnel have said that they have often found themselves in the position of transmitting information from Washington headquarters to the regional offices to let them know what is going on. That is certainly a difficult problem, and, as I say, we only have two staff people at this point that have been assigned since December in the regional office.

Senator **Lautenberg**. Mr. Birns?

Mr. **Birns**. Well, it is interesting. Region VII is Kansas City and it is the only regional office that has put the program into the

Office of Congressional Liaison. One advantage is that not being in an operational program, those folks have a much broader viewpoint of the legislation than air or water people.

Of course, like other regional offices, they are woefully understaffed and underfunded. They don't even have money to travel when they have to get out to conferences. We have the Kansas League of Women Voters holding citizen conferences around the State now. We have invited EPA to attend it. They can't do it; they don't have travel money.

Senator **Lautenberg**. No travel money? Dr. Beckowitz, what do you think?

Dr. **Berkowitz**. What we are concerned about and what we are beginning to experience is that we have disjointed portions of EPA working on the same program. Where we have people who are going to go out and talk about the right to know impacts of 313 information, that is all they are going to talk about when 312 information is also very important, but the 312 information falls into the purview of a different program, emergency response.

So, they are going to talk about 313 information without talking about the potential for releases as reported under 312. There is a real dilemma here.

Senator **Lautenberg**. Mr. Brown, if you want to comment, you are welcome to. The other panelists have statewide orientation and yours is local, but if there is any comment you would like to make, please feel free to do so.

On the enforcement side, what is your view of the States' role in terms of the primary burden for enforcing the law's emergency planning provisions?

Dr. **Berkowitz**. We feel that we have no role under title III. The SERC can require, can arm twist, but in terms of the ability to enforce, we really don't know exactly what our role is. We know that we have threat of citizen suit if we don't provide this information, but we don't know what our role is under title III.

Senator **Lautenberg**. Mr. Birns?

Mr. **Birns**. As I mentioned earlier, State and local committees have enforcement authority equivalent to EPA. At this point, however, we realize that the program is in its start-up. We are putting almost all our energies into outreach and to try to get voluntary compliance.

We found that information and knowledge of the program and its goals has been very successful in getting voluntary compliance. At some point in the future, enforcement may be an issue that we will have to look into. It just has not been a priority today.

Ms. **Buchanan**. Senator, because we have not yet passed our own enabling legislation, we are really still at the mercy of Federal enforcement. We are having some debates now about how strong our own enforcement will be, whether the State will actually try to formally approve plans or simply make recommendations to local communities, and that is an outstanding issue right now.

Senator **Lautenberg**. Can't the States enforce under the State law and sue?

Dr. **Berkowitz**. Basically, by combining as much of the reporting requirements under 312 and 313, we can take action under our Community Right to Know law. My comments that I offered before really did pertain to the 313, the State's ability to enforce 313, and that is the only power that we see that we have in enforcing the provisions under title III.

We have a State law. By making the reporting information as synchronous as possible, we can then enforce under our provisions.

Senator **Lautenberg**. What are your respective States doing to respond to the fact that EPA has gaps in its enforcement policy?

Ms. **Buchanan**. Just one comment. I think that in our draft enabling legislation that is currently under consideration in the Ohio House of Representatives, we are trying to take some steps that go beyond title III. For example, when a release occurs to request that an industry not simply provide information on that release but provide information on what steps they are taking to prevent that type of thing from happening in the future.

In terms of the relationship with U.S. EPA, I know that Ohio has asked that the regional office come and hold hearings in the counties where problems occur when we get down to enforcement, but we need to pass our own law to be able to really get some teeth into it, I believe, because of the lack of Federal resources.

Mr. **Birns**. Right now, as I mentioned earlier, we have the enforcement authority, and we are not exercising it, and we probably won't be exercising it until we get to the position that we feel the reporting communities are properly and fully aware of what their responsibilities are. Then if we have non-compliance or intentional violation, then we will seek to develop an enforcement strategy.

Having the authority also at the local level, I think, is very critical, because one of the things that the local planning committees and local emergency response agencies lack is a tool to allow them to work with the facilities in getting compliance. Compliance with this statute, because it is so broad, affects so many potential responders. It is going to, I think, effectively be done at the local level, and we think the local authorities should be very instrumental, particularly later on as the local committees become much more active and are ready at the planning stage to get those plans together.

Senator **Lautenberg**. Dr. Berkowitz, what about New Jersey? What are we doing to respond to the gaps in EPA's enforcement policy?

Dr. **Berkowitz**. Senator, as we said, we are fortunate that we have a lot of overlap in our existing Community Right to Know law. In addition to that, under notification laws, we have existing State laws that allow us to enforce.

In fact, we are beginning to position ourselves to take a very aggressive enforcement action, but only in being able to enforce the right to know provisions under the Community Right to Know, not under title III. We think that it makes good sense for EPA to start developing strategies that better integrate State and locals into an overall enforcement policy.

Senator **Lautenberg**. I want to just get back to something, Dr. Berkowitz. Just looking here at the statute, can't the State sue under title III? You are talking about not having administrative penalties.

Dr. **Berkowitz**. Yes, what I am saying to you is that in terms of our ability to enforce the provisions, primarily under 313 and the regulated facilities, we don't see where we are empowered under 313. You are correct in pointing that passage out.

Senator **LAUTENBERG**. I would like to touch on the role of EPA on emergency planning. Do each of your States want a more prominent role for EPA in the emergency planning programs?

Ms. **BUCHANAN**. Yes, Senator. I think there is clearly a need for more help. We just had a discussion about this in our SERC executive committee last week. There are still many people at the local level who don't feel comfortable with the planning, and there is clearly a need for more leadership from the Federal level.

Dr. **BERKOWITZ**. I think there is need for leadership at all levels, not just Federal Government but the State level as well. We have developed 588 local planning committees. We have used the political boundaries to do such.

Working with that number of entities is difficult and, some would say, ill-conceived, but it is our thought that that is where the action takes place.

We need help in trying to get out model planning documents, model approaches, facilitation of interactions between industries and the various constituents that comprise the community. We could look to EPA to help us do that, but we also are beating the bushes.

Mr. **BIRNS**. Senator, I would like to see EPA particularly put emphasis on data management. Planning is an end use of the information received.

What we are trying to do in our State—and we are doing it on our own because EPA has not gotten to this point yet—is develop a data system that will allow us to use the title III data at the State level and develop facility data bases and chemical data bases that can then be used by the local committees, having the State upload the information using State resources to provide this information to the local committees.

They would then be able to use this data and local computers to load local information—roads, highways, maps, emergency responders, what have you—into an emergency response plan that would be computer based at the local level and that this plan itself cannot also be used not just for the emergency planning but also in emergency response so that we integrate title III data with emergency planning and emergency response capability.

It should be comprehensive, and I haven't seen EPA take that approach yet.

Dr. **BERKOWITZ**. We would like to take it a step further. We think that LEPC's are a resource that we should be tapping in response to questions that are going to arise out of 313 data. There is no clear role for LEPC's that has been envisioned, and we think that we need the LEPC's to be able to deal with the questions that are going to arise out of 313 data.

Senator **LAUTENBERG**. Shouldn't the States be helping them develop that kind of skill and data base?

Dr. **BERKOWITZ**. And we are. We are, and we are throwing money at it.

Senator **LAUTENBERG**. You defined over 500 jurisdictions, you said, in the State of New Jersey.

Dr. **BERKOWITZ**. That is correct.

Senator **Lautenberg**. Yet, there are only about 300 local emergency planning committees that have been formed to date?

Dr. **Berkowitz**. That is correct. At this point in time, we have 588 LEPC's required, and we have 315 formed. We think that we have perhaps as many as 80 percent of our chemical facilities covered within that 315, but you are right. There is going to be a need to encourage those committees to respond.

Senator **Lautenberg**. What can the State do?

Dr. **Berkowitz**. We have a significant outreach with the State police. The State police are the primary lead for the emergency response provision, subtitle A of title III. We have had significant outreach efforts at many different events. We have had all day conferences and several-day conferences on the requirements.

Senator **Lautenberg**. Should all of the jurisdictions have their committees formed and response plans?

Dr. **Berkowitz**. Certainly.

Mr. **Birns**. Picking up with what Dr. Berkowitz said, not only the LEPC's but also local health departments are going to be instrumental in interpreting this data, both the 312 information and the 313 information to local people and local committees in how to use it in emergency planning and to estimate health and environmental effects.

We think health departments have pretty much been neglected in this whole process. We have been trying to make a special outreach effort in our State to these health departments.

We think that EPA should develop a long-term plan. One of the things the agency has been doing is developing rules and regulations. For example, on the 311 and 312, they talk about the 10,000 pound reporting limit now, but we don't know what it is going to be in the future.

Under 313, they have proposed regulations—excuse me, final regulations which are different than their original proposal. For example, they only have annual emissions rather than peak emissions and what have you.

If in the future the agency is going to be getting different information, they should at least put a plan together so that we at the State level will be able to say that well, okay, today is a start-up year or this is an interim year, and in the first year, we are getting this information. In the next year, we will get some different information, and here is where we are going to be in five years.

So, when we try to interpret to the public the limitations on the 313 data base, at least we can say well, these gaps are going to be filled over time, that the agency is trying to get us where we have to be. Right now, we have a program that does have gaps, but we have no information as to where EPA sees the program in two to five years and whether those gaps will be filled.

So, I think a five-year plan would be a very useful thing for us.

Senator **Lautenberg**. With the MSDS's, are you having success in getting lists of material safety data sheets?

Ms. **Buchanan**. Senator, as I mentioned, we were able to get 90 percent lists, and I think that was partly out of the experience in Ohio's local right to know laws where the first Ohio right to know law required MSDS's, and they soon realized that was a big mistake and we went to the list format, and I believe we did it simply by passing a strong resolution from the SERC and with the cooperation, particularly, of the large industries.

Mr. BIRNS. We are getting about a 50/50 split in terms facilities submitting MSDS's and those submitting lists. However, on the surface, it is 50/50. If you take a closer look, facilities that are submitting large amounts of MSDS's are tending to submit lists while those facilities that only have a small number of MSDS's would submit the MSDS.

It is my understanding that we are getting about 80 percent lists and 20 percent MSDS's, and that is primarily because of our similar requirement in our State law that encourages lists rather than MSDS's.

Senator LAUTENBERG. Lists are the preferred way to get the information if we can do it without causing duplication.

Mr. BROWN. Mr. Chairman, could I address that issue, please?

Senator LAUTENBERG. Please do, Mr. Brown.

Mr. BROWN. At the local level—I realize that most of the questions have been at the State level—we have received 100 percent cooperation in MSDS's and lists to include tier 1 and tier 2 both from the facilities. Now, I do not know what the State is receiving, but we have been receiving this information, in most cases, for up to ten years now.

Senator LAUTENBERG. I guess it is a little bit easier when you are in one community, essentially, to be able to sit down and essentially jaw bone with the people that you are working with. That would be desirable, and it is a good example again, but if Ohio is getting 90 percent of the information on lists, that is impressive.

How much is each of your States allocating for title III implementation, funds in your own State?

Dr. BERKOWITZ. From the Department of Environmental Protection's perspective, our community right to know program costs us $1.2 million. Our emergency response program costs us $1.5 million. That is $2.7 million.

Senator LAUTENBERG. How much of that comes from fees?

Dr. BERKOWITZ. Approximately $700,000 comes from fees. So, we have to supplement it with about $2 million.

Mr. BIRNS. In Kansas, the 1988 appropriation was approximately $500,000. Approximately $120,000 went to the Adjutant General's department, and the remainder went to the Department of Health and Environment. This is 100 percent for title III funding.

Our fees, we hope, by 1991, we will be returning in the changes in fees, 50 percent of the support from general revenue and 50 percent from fees.

Ms. BUCHANAN. Ohio appropriated $597,000 when title III passed which has been used exclusively for Ohio EPA and to fund the operations of the SERC. The proposed fee structures should raise—of course, we don't know how it would work—but about $3.4 million annually with $1.8 million going to the LEPC's and the rest going to different State agencies and to fire fighter training.

We are hoping to train as many fire fighters as possible in Ohio, including many volunteer fire fighters.

Mr. BROWN. Sir, the figures given to me as the working figures for the Commonwealth of Virginia for the year of 1988-89 was $189,000 appropriated by the General Assembly of which, after wages and insurance is paid, leaves about $20,000 to administer the program across the Commonwealth. The figure for 1989-90 is $147,000.

Senator **Lautenberg.** I will leave it to each of the States to make their own decisions, but they have to make judgments on how important it is to get that information and set the mechanism in place, whether it is considered a threat. In your State, you saw the threat. In our State, we saw it. There have been accidents that have taken lives or impaired health, and, I think that citizens across the country generally support enhanced emergency planning efforts.

I have seen poll after poll that say that people want a cleaner environment. They want to preserve their health, and, for the most part, they are willing to pay for it as well, and that is an admission of the seriousness of this thing.

There has been some EPA funding for title III. Over the last couple of years, there have been some State grants through the section 305 programs.

I thank you very much for your testimony.

We now invite the third panel. I would like to call Dr. Win Porter and his staff to the table.

We are going to take just a couple minutes for a recess before we start with this panel.

[Recess taken.]

Senator **Lautenberg.** We will reconvene the subcommittee. Take your seats, please.

This panel is from EPA, headed by Dr. Win Porter whom we welcome, as usual, to our hearings. He is accompanied by Mr. Kimm, Mr. Elkins, Mr. Stiehl, and Mr. Makris.

We ask you please to stand to take the oath since this is an oversight hearing.

[Witnesses sworn.]

Senator **Lautenberg.** Win, we invite you to start. If you want to introduce your colleagues, please do. You know we are under the same time constraint for this panel as we are for the others. We would ask you to summarize your testimony. Of course, the full testimony will be included in the record.

STATEMENT OF J. WINSTON PORTER, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY VICTOR KIMM, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF PESTICIDES AND TOXIC SUBSTANCES; JAMES L. MAKRIS, DIRECTOR, PREPAREDNESS STAFF, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE; CHARLES L. ELKINS, DIRECTOR, OFFICE OF TOXIC SUBSTANCES, OFFICE OF PESTICIDES AND TOXIC SUBSTANCES; FREDERICK F. STIEHL, ASSOCIATE ENFORCEMENT COUNSEL, OFFICE FOR ENFORCEMENT AND COMPLIANCE MONITORING; AND JONATHAN CANNON

Mr. **Porter.** Thank you, Senator Lautenberg.

It is good to be here for this important hearing. I have with me today Fred Stiehl on my far left. He is from the Enforcement Office. Chuck Elkins and Vic Kimm to my immediate left are with the Office of Pesticides and Toxic Substances. Jim Makris on my right is head of our Preparedness Staff, and Jonathan Cannon is also with the Enforcement Office within my operation.

What I want to do, as you said, is submit my full testimony for the record, if that is okay, and briefly summarize where I think we are. I want to quickly go through three items today.

I want to talk about what I think we have accomplished in the last year and a half. I want to talk about what I think the upcoming major events are going to be and how we are going to deal with them. Finally, I want to close by talking about some of the major challenges I see facing us, some of which you have heard already.

First, we are really off and running on title III. As you know, Lee Thomas started some of this initiative before you got involved and did a good job of pushing this legislation through the Congress. We got a running start on this a few years ago. Since the law passed, we have met ten statutory deadlines, and we have done seven major rulemakings, including two with 30-day and 90-day time lines, which is probably some kind of EPA record. We treated all of these rules very seriously and are off to a good start.

With respect to the emergency planning program itself, all 50 State emergency planning commissions have been formed, and about 3500 local emergency planning committees have been also formed. Planning is underway by these committees. Some are finished or at least partially finished, such as Hopewell which you heard from. Some are struggling. Some need to get organized. It is kind of a mixed bag we can talk about more later.

With respect to community right to know, many MSDS's or material safety data sheets have been submitted. We are happy to say also that most have been in the form of lists which we think are more manageable and we encourage that. Most large industries certainly submit lists as opposed to individual pieces of paper.

MSDS's were submitted last October with a high degree of compliance by large industry, not nearly as high by smaller companies. That gets back to the outreach issue.

The emergency inventory forms had to be submitted in March 1988. Again, we had fair compliance.

We have completed the emergency systems review required by Senator Byrd's part of the law. That review involves looking at the state of the art in monitoring, detecting, and preventing chemical hazards. I signed off on the review today and forwarded it to Lee Thomas, who will send it on to the House and the Senate.

With respect to the toxic release inventory reporting deadline which is coming up on July 1, we completed the reporting form in February. We did a direct mail brochure to 230,000 facilities and businesses to let them know what was coming up.

We have had a very extensive outreach program. I am somewhat concerned by some of the comments I heard from the previous panel in this regard. Though we have worked very hard at getting the word out obviously, we're not getting through to everyone, and we need to improve outreach.

We have been trying to get to three audiences: State and local officials, industry, and the public at large. We have had three national teleconferences, including one yesterday for health planning professionals. We have had six regional workshops. We have an 800 number hot line which continues to receive about 300 calls per day. We have done over 400 presentations and articles for various people around the country on this program.

We estimate we have reached a targeted audience of about 1 million people at this point. We obviously have to do more based on what I heard earlier today, as I said.

With respect to major upcoming events, first, the section 313 toxic release release information is due July 1. We are concentrating on preparing EPA and the States for the questions we are going to get, and we expect a lot of questions. As indicated by several of the witnesses, including Congressman Florio, we think there will probably be about 30,000 facilities reporting. So, we are going to have a large amount of data, and we certainly will want to talk to you about that.

Second, emergency plans are due in October. I mentioned the approximately 3500 groups working on those. We are concerned about the short time available to get that done, but we intend to hang in there and work with people. We want to stress it is an iterative process. We want people to meet the deadline, but, obviously, they can keep improving their plans. We would encourage them to deal with the most important issues first, and we can upgrade and expand the plans as time goes along.

Senator, closing on the subject of major challenges, let me mention three or four that I see. One, of course, is information management. We have a huge amount of paper and information to deal with here. We have been trying to deal with that in a variety of ways.

For example, we worked with the National Oceanic and Atmospheric Administration (NOAA) and the Seattle Fire Department to develop some computer software which people can use to manage a lot of this information. They also are negotiating a number of private companies with appropriate software.

Enforcement is perhaps our major challenge—and you have heard some about that already. First, we think compliance is the issue, and we are coming at it a couple of ways. Actually, to some extent, I would like to associate myself with the comments of Mr. Birns from Kansas in that we are taking a two-pronged approach.

We started very hard and will expand our outreach effort, letting people know what is going to happen. We have been concentrating on the people that have to report and on the various people that are involved in the planning.

We intend a transition to more classical enforcement going with a set of two distinct approaches. First, we will receive the section 313 data directly at EPA. We plan to identify and penalize non-reporters of that data.

For reports which go to States and locals—and many things do go to them, not to us—we expect the States and others to carry most of at least the initial enforcement load. We will do follow-up on cases referred to us, picking cases for maximum deterrence value.

We also have the sole Federal authority for release enforcement, and we intend to coordinate this with our Superfund release enforcement authority.

So, we have some very difficult issues there on the subject of enforcement.

The third major issue we think is important is State and local capability. I just want to mention we are working hard on that. We have an upcoming national conference in a few days, June 8 through 10, where all 50 State emergency response commissions and about 40 to 50 selected local committees are coming in. Along with several other organizations, we are paying some of the travel for that. We want to get a good group together and, hopefully, fan out with some of this information before some of these big deadlines are on top of us.

I want to close by saying that we consider title III the beginning, not the end, of a process. We are encouraged by the results so far. We have certainly got problems. Lee Thomas and I have spent a lot of time trying to organize EPA to deal with this issue. As you know, Lee is a very strong proponent of title III.

We want to end up with a process involving all levels of government. We think it is going to take a real team effort—and you heard some of that today—to make this work. I am proud of our progress so far. We have a long way to go.

I might close by saying I note your 20 points. It reminds me a little of your 16 points in Superfund, but, again, I think it is a good start. We would be happy to respond to those 20 points now or later, but my quick look at them is I think most are quite good ideas. I think we are doing quite a few of them already and would be happy to deal with some of the others.

Thank you very much, Senator.

Senator LAUTENBERG. Thank you very much, Dr. Porter.

I was waiting for the comparison of the 20 to the 16. I thought you were going to tell me that they both met with the same response from EPA, and I was eager to hear what that response would be.

Mr. PORTER. The usual rapid response, Senator.

Senator LAUTENBERG. We would like to get a ROD on our plans here, a record of decision, to see whether or not we are going to be able to encourage our friends at EPA to move the programs along. I recognize that it is hard to be objective about all the programs that you have to manage, because there are so many and we succeed in discovering more opportunities. There are more requirements to deal with the environmental problems that we have.

Again, it is a top issue for people across America, people in my State, obviously. You know the New Jersey story, densely populated and a high presence of chemical companies. We value the jobs. We want to be able to have an environment that is compatible with the economy as well as the good health and well-being of our citizens.

When you say, Win, that you have a running start, I perhaps would suggest new sneakers. I am concerned about your ability to meet the deadlines. We have a serious one coming up July 1. I heard you say that you have gotten a lot of the local emergency planning committees developed, but there are many that are not.

I recognize that there has to be some kind of a tolerance for the development of experience, how the effort fits into place, but what we do have to have from your office is a commitment, a commitment that goes to requesting funds, to making funds available to the States, and that has been, I guess, our largest debate, because we don't know whether the problems emanate with inadequate funding for programs or whether it is an attitudinal issue.

I heard you say that you are paying travel expenses for people to come to a national conference, and that was for local community participation. Yet, we heard the gentleman from Kansas talk about the inability of people from the regional office to come to a conference they were having within the State because they couldn't get travel expenses for it. It is hard to square the two, Win.

Obviously, we need the participation of the people in the regions, even for their own learning experience, to be able to mix and discuss with some of the State people and some of the local people. We heard about some State progress this morning from our panelists.

How do we deal with that? Is money available for getting people to a conference, for example, that has a lot of press attached to it on the local level or the regional level? Do we have adequate funding for people to attend meetings.

Mr. **Porter**. Senator, if I can respond, I think we can solve that issue. I was disturbed to hear that. We spend a lot of money in this program on travel because we realize it is a different kind of program. We are not trying to abide by the normal ground rules with respect to travel because we have to get the word out to a large number of people.

We do have an issue with respect to our regions in that they have a lot of work going on. We are working very hard, as you know, on Superfund and RCRA and various other things. The title III program is different. EPA does not have to produce 300 permits as under RCRA or accomplish 600 clean-ups as in Superfund. The numbers aren't quite that clean cut in terms of work we have to do.

However, what I will do based on this hearing and what I heard earlier is go back and reexamine both the attitudes in the regions and also the travel budgets. I think what we have done largely to date, frankly, is spend a lot of time out of headquarters running around doing all the kinds of things I mentioned.

Some of the regions have done better than others, and I don't mean to criticize them, because they are all working very hard. We do need, however, to be sure that information is being pushed out through the regions in a coordinated way, and I think it is really penny wise and pound foolish for us not to be able to deal with things like travel expenses. I will look into the matter.

Senator **Lautenberg**. A major goal of the law is to encourage emergency planning to save lives and minimize risks that come from accidents. Shouldn't your enforcement policy advance this goal by going beyond its primary focus on post-accident violations after the accident or the explosion has taken place? Shouldn't we try to get at these things before we are perhaps at risk?

Mr. **Porter**. Definitely, Senator. One of the things that should come out of the title III program is much more prevention. We have talked a lot today about response, and I have talked a lot about prevention, but we really need to have people working up front to prevent these accidents.

We are going to try to be more aggressive regarding releases, because sometimes they can be precursors of the more serious problem. It is hard to spot, you might say, an explosion waiting to happen.

I have to admit that is very difficult with the millions of tanks and facilities out there, but I think, as indicated by the gentleman from CMA, that because of this program people will see where their releases are coming from and where the dangers are and will pay a lot more attention to prevention. Prevention is the ultimate goal.

Senator LAUTENBERG. Have you brought post-SARA enforcement actions even under your limited enforcement policy?

Mr. PORTER. Yes, sir. We have six or seven cases that are being investigated right now, including one criminal case.

Senator LAUTENBERG. Is that an adequate number of reviews with the potential problems that we have out there?

Mr. PORTER. I am not sure, Senator. As I say, we have really emphasized information and outreach so far. With hundreds of thousands of businesses that need to comply, we have tended to push hard on letting people know. Obviously, even there, we have fallen a little short in some areas.

We do need to do some visible enforcement. We are going to try to crank that up.

Senator LAUTENBERG. Six or seven out of the hundreds of thousands just doesn't send a very threatening message to those who would ignore the law.

We are facing low title III compliance by that universe that we just discussed of regulated facilities. But you only have 11 full-time equivalents on your enforcement staff. Is that correct?

Mr. PORTER. That is correct.

Senator LAUTENBERG. How can you possibly expect that staff with some limited outside resources to enforce against the large percentage of violators there are going to be?

Mr. PORTER. Senator, we are going to continue to review the subject of enforcement. As a matter of fact, I now am putting together the fiscal year 1990 budget which will be discussed this summer. One of the questions we need to look at is the enforcement question.

We do have some synergism, though, with other programs. We have people in the Superfund and toxics programs that deal with some of these issues. In the Title III program as a whole there are about 160 people, including quite a few retired engineers. So, it isn't a handful of people. There will be about 170 people working in the program next year.

I do intend to review this, but the problem I have had, frankly, Senator, is not being sure what in fact is going to happen. In other words, if I had a better sense of what is going to happen on July 1 or next year, I could plan for it better. After July 1, I think we will have a much better feel for what to expect with respect to emissions information, what the community reaction is, how we are able to handle the data, and so forth.

I think we are going to have to really be on top of this in the sense that Lee and I are quite prepared to look at some resource shifts. We are quite prepared to do that. So, I don't want you to think that this is the end of this discussion, that we just cast these numbers in concrete.

Senator **Lautenberg**. No, I will not, because, again, there has been a fair amount of time pass since this law was enacted, and you did have the capacity to anticipate a lot of these problems. I am hoping that we are not just waiting for D-Day to arrive at which time we are going to start off with a huge enforcement program.

Out of 160, how many are full-time equivalents?

Mr. **Porter**. Practically all of those are full-time equivalents. About 60 are AARP's people, retired folks.

Senator **Lautenberg**. How many on enforcement?

Mr. **Porter**. The 11 was right as far as full-time enforcement people next year of in this program, but we have other resources we can get at indirectly in some of the other programs.

Senator **Lautenberg**. Well, you mentioned Superfund, and there we have had our other discussions about the inadequacy of the enforcement programs there. It is well enough to say it, but, realistically, are those people available? Are those resources available to help us with this?

This is a stand-alone program that needs a lot of support.

Mr. **Porter**. That is correct, and I don't mean to imply that we are going to be able to take a lot of those. We have the release part of Superfund, the reportable quantity part of Superfund that people are working on already, admittedly not a large number, and we need to improve there also, but we have approximately 500 full-time equivalents in Superfund, for example, in enforcement.

So, there is a lot of work to be done, and we are just going to have to establish the priorities and decide how we array this as we go along.

Senator **Lautenberg**. As of May 12, EPA documented receiving 233 inventory forms, 90 percent of which contained technical or substantive errors. What do we conclude from this? Are you counting on not receiving forms from large numbers of covered facilities or are the resources so inadequate that you can't deal with the massive amount of erroneous submissions? Is that a fair sample to make a judgment from?

Mr. Kimm or Mr. Elkins?

Mr. **Kimm**. I would be happy to respond, Senator.

I don't think that sample is large enough to make a very meaningful representation of the large universe. Let me begin by saying something about the larger universe.

We anticipate that the total universe that will be covered will be about 30,000 facilities, and we expect that, on average, they will deal with about 10 chemicals per facility. So, we are looking at a total flow of about 300,000 forms. Against 300,000 forms, the small first few hundred that arrive ahead of time may or may not be representative of the larger problem.

As we set about how we are going to handle this large flow of information, we have differentiated—and we use terms like technical violations and what have you which I think require some further clarification. As the data arrives, it will be entered. Some of the forms that come in that will contain errors will be what we have termed "fatal errors," which is a way of describing a situation, for example, where the CAS number is inappropriate. We don't know what chemical they are talking about, and there is no way to register that form.

The automated system has been designed in a fashion that it will generate a letter back to the originator saying the form is inadequate and explaining exactly what needs to be done to fill out the form properly. Of course, that letter, if it is not responded to in a reasonable period of time, will be followed up with more direct enforcement type of actions and penalties.

There are other deficiencies in the data which, for example, missing a zip code. The data can still be entered into the system, but the zip code is important for geographic analysis that we may want to perform later. For this set of deficiencies, we will again in an automated fashion generate letters back to the sender saying you have omitted to fill in this particular information.

Senator LAUTENBERG. You don't have to go back to them to get a zip code, do you?

Mr. KIMM. Well, we are going to have to find an effective way to get as much data into the system as we can so that it will be up to all of the uses that people have for it in the future. Certainly, the ability to pull out of this immense data base all of the emissions in a discrete of geographical area will be facilitated by zip codes. It is not the only address, but it is an important one.

Senator LAUTENBERG. Okay, but you are not going to be transmitting letters back and forth saying, "give us your zip code"?

Mr. KIMM. What I suspect we are going to discover is that people that missed the zip code missed a few other things. I used that merely as an example.

Senator LAUTENBERG. So, we are talking about things you call fatal?

Mr. KIMM. There are a set of omissions in reports that will prevent us from entering them into the system.

Senator LAUTENBERG. Sounds like it is right at the beginning.

Mr. KIMM. There are other kinds of technical defects which we will endeavor to correct to have a complete data set.

We are also beginning to collect information which will enable us to deal with the question of non-reporters. That is, when we have enough forms in to know what we do have, we can compare that against inventories of the anticipated regulated universe and begin to think about who hasn't reported who should have.

Finally, through tips and other means, we will probably hear about some people who have willfully not filed the information, and we will be looking to effectively pursue those people.

Senator LAUTENBERG. How about your resources? I don't mean to make light of the digestion of this volume of information. As you may know, I come out of the computer industry, and I know what it is like to build a data base and get lots of participants to conform. But, obviously, one day, you are going to have to present specs on information submission, and this is going to require online access throughout the country in order to have the thing working appropriately.

But do you have adequate resources to deal with this volume of information that you are expecting? Do you have adequate resources presently to really go back to those who are submitting the information and say that these are early mistakes that we are getting. Make sure you put in the zip code, make sure you do this, make sure you do that.

Because you ought to be able to start to bunch these omissions or errors in a way that gives you some kind of a lead to improve the quality of data that you are getting.

Mr. KIMM. Obviously, you have covered a variety of functions. We believe that we have adequate resources to meet the bare essential needs, that is, to process the data and to begin following up where there are deficiencies.

Our ability, in fact, though, to do that is going to depend on several factors which we haven't seen yet. One is the rate at which these applications arrive, and a second is the condition of the applications. By mid summer we should have a much better feel for the quality of the information that we are receiving. If we get high quality data, it will be a much easier task.

In terms of the specific questions that you have raised, we believe that we have the capacity to receive the forms, to enter the data, and to, through an auxiliary system, make that data available to the public in a user friendly fashion by the spring of next year.

Senator LAUTENBERG. Mr. Kimm, EPA indicated to our subcommittee staff last month that there were no dollars, zero dollars, budgeted for quality assurance on emissions data. EPA staff modified that assessment over the last several days. What is the dollar figure that is available for reviewing the quality of the submitted data?

Mr. KIMM. We are talking now about 1989 expenditures. We are in the middle of trying to plan for the use of these expenditures, but we are anticipating about $2 million of the available funds will be used for a variety of activities that we would characterize as data quality assurance.

Senator LAUTENBERG. But you are now developing data. You are now getting data. You are now reviewing it. Are we spending money now on that review. Even if it is on the 233 forms that you got, what is budgeted?

Mr. KIMM. We have received the first couple of hundred forms. The expenditures to date, as I am sure you are familiar with, have been for the software and the systems design and the initial data entry. We have not passed the point, since these reports are due on July 1, of having huge quantities of data to process yet.

The system seems to be working. I am sure we will encounter problems, but we believe that we have an inherently reasonable way of dealing with this information, although we could be overwhelmed if gigantic numbers of poor quality forms arrive in short order.

Senator LAUTENBERG. What was requested in the 1988 budget for quality assurance?

Mr. KIMM. I don't think we have a number neatly broken out that way. I think we can prepare it for the record if you would like

Senator LAUTENBERG. Is there anything, Win, that was specifically in the thought process as you developed the budget request to deal with this? Obviously, we all knew it was coming. This isn't a surprise. What is the penalty for those who don't comply or those who haven't submitted by July 1?

Mr. STIEHL. Senator, if I may, the law allows us to assess a penalty of up to $25,000 per day per violation. As Dr. Porter said initially, the thought that we have is that we are trying to get as many people into the system as possible. So, it is not our strategy at this point to go after someone who comes in with an incomplete report for something like $25,000 a day.

As was discussed, we are planning on having computer generated notice of noncompliance sent out which actually, in our view, expands, if you will, our enforcement resources. That is really the first step in an enforcement process, and it doesn't really entail using any of the eight field FTE's that we have for the enforcement process. Then, we would gradually escalate enforcement, and, ultimately, we might get to the point where we are assessing up to $25,000 a day.

Senator LAUTENBERG. We know what that universe generally looks like, do we not? I mean, we know who the people are that are required to report generally.

Has anything been done to date that says "Remember that July 1 is the date that you are supposed to comply with"?

Mr. PORTER. Yes, Senator. The 230,000 flyers we sent out was one example of that, and we have had, as I indicated, a lot of teleconferences and other outreach activities.

As other panels characterized the situation, the larger industries, particularly the chemical industry, but the larger industries in general, are well aware of the deadline through their trade associations, their Washington representatives, and so forth.

Of this universe, a large number of people are very small businesses, and that is where we are having more difficulty. We are trying every angle we can to apprise them, but my personal prognosis is that we are going to find that most of the major companies, a very high percent, are going to comply. What we are also going to find is fairly large numbers, try as we might, of the dry cleaners and people like that who don't read the Federal Register and who don't come to Washington to meetings, are going to have more difficulty.

Senator LAUTENBERG. That is the other extreme. Between the very large companies and the local dry cleaner there is quite a base or people involved in businesses that produce material or work with material that could qualify. If we have notified them about the deadline and how important it is—I don't know what your flyers contain—you have to be prepared come July 1, now only four weeks away, to handle a fairly heavy volume of information.

I would assume that you have to have your resources all together up and running. You have to have the core personnel. You have to have a work process structure. You have to have programs. You have to have all those things in place, I assume.

Mr. PORTER. And they are.

Mr. KIMM. Yes, they are.

Mr. PORTER. Senator, the other thing I might say very quickly and that I mentioned in my opening comments is that we are getting 300 calls a day at our hot line. So, these brochures and other materials we have sent out have triggered a lot of detailed comment 300 calls a day is a fair number, and our trained staff are trying to respond to those.

Senator LAUTENBERG. When do you think EPA will have emissions inventory data available either on a data base that can be accessed or other means? By the way, are other means contemplated besides—I assume that this data base is accessible with State or local agencies, a dial-up number or some direct access facility?

Mr. KIMM. We plan initially to try entering the data, in the major main frame system operated by EPA. In order to make information use friendly, have Aidabase and a number of other fairly complicated systems must be lined since what is efficient for storing data is not accessible to the lay person.

So, we have moved along with the Library of Medicine as a primary candidate to develop a much friendlier outreach system which, as I mentioned earlier, we expect we will have up by springtime. The outreach system will enable a citizen or an interested community to access the material on a variety of bases. The Library of Medicine also is repository for a number of other toxicological data sets. So, it will provide a full range of information to help people begin to interpret the data.

In the interim, that is, between the time that we receive the information and then we will have a limited ability to provide hard copy, as the States will, to interested citizens. So, we will be able to provide hard copy to a limited degree until such time as we have the user friendly system up. That time frame is the time frame that we have both contracted for and believe is realistic.

Senator LAUTENBERG. When do you think a system like that will be available.

Mr. KIMM. The friendly system will be up in the spring of next year.

Senator LAUTENBERG. The spring of 1989. Is that contracted outside EPA?

Mr. KIMM. Yes.

You asked about other means. There are at least two other things that we are planning to do with the data since not everyone is going to be comfortable with electronic media.

One of them is a microfiche system. Basically, once the inventories are complete, we will put them on electronically readable tapes and, from those, develop hard copy microfiche which will not just be the forms but will be the full explanation of what the data is. We are planning to do that on a State by State basis and provide it to all on a county level across the country.

So, we are going to try to make this information available across the countryside in as easily a readable fashion possible. At this time, again, our projections are that we will be able to fund that.

Senator LAUTENBERG. What kind of quality assurance plans do you have and what percentage of the data are you looking to assure quality to? Can we expect it to have 100 percent reliable data in there?

Mr. KIMM. To the last question, the answer is clearly no. I don't think there is ever going to be a data system this large that has 100 percent reliability.

As I indicated, we have a variety of approaches that involve taking various steps to resolve problems to clear sets of deficiencies in the forms as they come in. We also are building algorithms which address the substantive kinds of questions. For example, if a facility handles large quantities of volatile chemicals and yet reports no releases to the air, that is a clear indication that there are problems.

The more expensive and more difficult area is the degree to which one can pull a sample from the larger universe and do a full field audit. Our capacity in that regard will be somewhat limited. We have estimates that it will cost us something like $1 to $2 million to try to get at a 1 percent sample of the facilities covered, and our ability to do that is a little touch and go at the moment.

Senator **LAUTENBERG**. Putting it mildly.

Mr. **KIMM**. But we will as we move along. Excuse me?

Senator **LAUTENBERG**. It is putting it mildly to say that your ability to do that is touch and go. I mean, the program is, unfortunately, inadequately financed, and we are just talking about getting into the full swing of things here.

Mr. Elkins, let me ask you, what percentage of the data can you quality assure? What are you aiming for?

Mr. **ELKINS**. Well, we have done a preliminary assessment, given the 1989 budget that we believe will be available to us, assuming it is appropriated. After we have entered the data, we will then turn to data quality. We think that we would, first of all, be able to find about 6,000 fatal errors and 25,000 technical errors.

We would then take about 1 percent of the forms and actually make telephone calls to check on the substantive errors that we believe are in those 1 percent of the forms. Then, we can make actual site visits to perhaps one-half a percent of the facilities.

So, we are at the more or less 1 to 2 percent level for data quality.

Senator **LAUTENBERG**. Is that of sufficient quality to give us the assurance that the system is working and that the information is of value?

Mr. **ELKINS**. Well, I think the data will be more valuable when used on a cumulative nationwide basis than if one has to look at individual facilities and trust the data on individual forms. With this amount of data quality assurance, we would not be able to say to the users that the data are of such certainty that they can trust every one of those forms.

Senator **LAUTENBERG**. What do you have to do, what steps do you still have to take to make sure that the data will be used by the media offices and the enforcement staff? How close are we to making that information available to them, and what do we have to do to assure that it will be of the quality and of the nature that they can use it? When will they start to get it?

Mr. **KIMM**. They will start to receive the information as soon as it is available to us.

Senator **LAUTENBERG**. I see.

Mr. **KIMM**. It will take a few months to input the data. It will depend, in part, on the volume of data that we receive initially, but we expect that they will work in tandem with us, and we have already begun some of the preliminary work of identifying facilities that we think are likely to have—that they should have filed so that those lists can be compared against the people who actually do file.

So, we intend to work hand in hand. The big uncertainty here is the quality of the data that we are going to receive. We will know the quality of the data, and we hope to do the things that you alluded to earlier which would be late this summer to look at the persistent problems that we are finding in quality and make sure that everyone is aware of that for the next round of this kind of data.

Mr. ELKINS. Senator, I would say that Lee Thomas has made the use of the data within EPA a very high priority. He has emphasized that to each of the Assistant Administrators, and he asked that an intra-agency task force be formed at a high level to begin work on that.

The task force has met several times now and involves the various media programs. The Media programs have been asked to submit plans to that task force on how they would use the data.

I will have to agree with Mr. Kimm, though, that at every one of the meetings, the media program representatives have emphasized to me the importance of the data quality, saying to me that if I am not able to deliver data of high quality, they are hesitant to commit large resources to use the data in their programs.

Senator LAUTENBERG. The objective for the result is likely to be in the 1 percent range—is that what I heard you say?

Mr. ELKINS. Yes.

Senator LAUTENBERG. Then what kind of confidence can we have that this data will be of value? This is a doable job, and I think everybody knows that.

This is one of the more complicated assignments that I am sure we have seen in the country. On the other hand, there are many others that involve assembling millions of bits of information and making it available.

The quality assurance task is a major task. That is why, for me, very frankly, there are considerable misgivings about the dedication of resources or the commitment to the quality assurance side. If the objective is a limited one, then what are we going to have that is of value to the people who are assigned the task of enforcement, of understanding what is really taking place out there?

Are we going to be doing something worse? Are we going to be masking the truth because we have ourselves information that gives people assurances, the producers, the people who work with the materials, some feeling of comfort that they have satisfied what they have to do and then let the rest of it go?

Mr. ELKINS. Senator, I have given you the pessimistic view of it. On the optimistic side, I would say that our program of data quality is directed at trying to make sure that we learn from the errors that we do find so that we can take a number of steps to at least improve the submissions in the second year. That is, the technical errors and the substantive errors that we find will then be incorporated back into our guidance to the industry on how they should report.

We would expect a lot of the errors would be unintentional on the part of industry. It is a complicated form. It is a complicated subject. I am sure we can improve our technical guidance to them, and we will find, I think, what those needs are by these data quality audits.

Mr. KIMM. Similarly, I think there will be significant incentives for the participating industries to be very careful about the data they report, because community reaction to the perception that facilities file poor or improper information would be quite serious. Certainly, we have seen such concerns expressed by the major corporations.

Senator LAUTENBERG. Mr. Kimm, sometimes you don't know what the significance is to the companies until you have been through a law suit or two, and this could easily be construed as information that gives comfort to the violator. He says, "Well, you know, we did what we had to. We weren't told that we did anything incorrectly. Therefore, we operated our facility, and the fact that this accident happened or that mishap took place—we feel we are free of liability.

The thing that I am concerned about here is that the resources and the focus has not been there. Listen, no one who knows anything about the management of data is going to suggest that as of July 2, we are all going to be able to breathe easily and know that we are not going to see any mishaps take place in our communities. That is not true.

It is, as one of our panelists said, a springboard, an opportunity. And we are going to have to work very hard, to get that information into manageable form and to get the quality assurances that we need.

One thing we do need is a commitment from EPA to ask for the resources. Even if you don't get them, at least have your consciences clear that you have asked for them, that you have stated the case, that you have argued the benefits and argued the value.

The law is there because it responds to the needs of the community, to the concerns of people across our country. Then your job as professionals is to ask for the tools and not to try to justify the inadequacy of resources. Rather, you must get there and say that we don't have enough to do it or we can't do it.

But it's not acceptable to say anything less or to try to make excuses for running an inadequate program, a program I worked very hard, as you know, to enact. We sat five months during the Superfund conference, staring at one another across the crowded room, as they say, and it was tough.

You fought your case from EPA's standpoint, and we fought ours from the Senate and the Congressional standpoint. But we came to an agreement, a bill that was signed by the President of the United States. Now, you have an obligation to enforce that law. I care deeply about this program, and so do the citizens across my state and the country. This emanates from my responsibilities to my State.

Mr. PORTER. Senator, could I comment just a little bit on that? I certainly want to indicate to you that we are watching this very closely. We have been able to meet our responsibilities so far. We are very concerned, as you are, about whether we have enough resources when things really hit here.

But I think, as the gentlemen to my left have indicated, we are not waiting just to see what happens. Far from it. We are planning and planning and planning, but there still is going to be an element of not knowing precisely what we are going to need until we really get into this.

I need to also point out that we have huge programs at EPA to deal with enforcement. We have an NPDS permit program. We have a Clean Air Act program. As indicated by Mr. Elkins, Lee Thomas has asked us to work together so that we have this data. The air office and the water office and the others who have hundreds or perhaps thousands of people can also interact in this process.

So, it is a real team effort, and I will be the first to admit I am perhaps as nervous as you are about whether we have enough or whether we really are going to be able to do it. We are not shy about asking for the resources. We are, as you well know, in a somewhat constraining environment because we could probably ask more money for all our programs and we have to balance this against a lot of other objectives.

However, I think we have enough to get started. We may find this summer we are going to need to ask for a lot more, and we certainly will if we need to get there.

Senator LAUTENBERG. Well, the plans are due in October. Can you honestly say that you expect that obligation to be met by October 17?

You know what the deadlines are. You have known it for some time. Do you believe that you can make a commitment here and now that you are going to be able to work to have those plans in place at that time?

Mr. PORTER. Senator, I think, come October 17, we are going to have a lot of plans. I will make that commitment. We are going to have thousands of plans, but what we are going to have, as I said in my statement——

Senator LAUTENBERG. How many will we not have?

Mr. PORTER. Well, we are not going to have a lot. I don't know what the percentage is going to be. I think, perhaps more importantly, we are going to have plans of differing quality. As several witnesses indicated, these are, to some extent, voluntary groups. They are having to create this out of whole cloth in about a year. They are screaming to me that they don't have enough time.

That is the bad news. At the same time, the good news is I think we are going to have a lot of plans: some quite good, some in the middle, and some fairly poor. I think we should press forward to that deadline and do the best we can. Then what we want to do, for example, is share a lot of the good plans. We are starting to do this already, as plans come in, show people what a good plan looks like.

These plans are, by the way, not due to us. They are due to the States and the local groups who also have to help—and I think they will help—on the quality of these plans. The plans are not coming to EPA.

Senator LAUTENBERG. They need your help, as we have heard from the other witnesses. I would have to tell you that it doesn't really sound to me like the preparation that needed to be done was done. The definition of a running start perhaps differs. There has obviously been some motion, but not a running start.

Mr. **Porter**. Senator, we got a guideline book out. In fact, we had one out before this law passed, the orange book that has my school colors from my university, but we won't talk about that. This book went out a long time ago. It tells how to prepare a plan.

We have had a lot of seminars and training things. We obviously have more to do, but thousands of copies of this are out there.

Senator **Lautenberg**. How about hands-on assistance from EPA? How much of that was available?

Mr. **Porter**. I am sorry, Senator?

Senator **Lautenberg**. Hands-on assistance, direct assistance.

Mr. **Porter**. I am going to have Mr. Makris respond to that.

Mr. **Makris**. Senator, I am going to try to respond to that. I was not here to be sworn in, but——

Senator **Lautenberg**. I see.

Mr. **Makris**. As I sit here, I am observing that in this room, you and I were probably the only two people together in Newark, New Jersey in 1985 when we started this whole process, and Jack McGraw was the EPA witness.

Senator **Lautenberg**. Right.

Mr. **Makris**. We have come a long way since then, if I may say.

Senator **Lautenberg**. I hope.

Mr. **Makris**. I think what we have done, recognizing both the limitation of resources and also the notion that your law puts the State in charge of the planning process, which is appropriate, is to ask the States to provide assistance to locals and, frankly, to ask States and locals together to decide some local areas where we could bring a lot of direct technical assistance as an example of how to proceed.

Hopewell is a good example. Our Region III has been working very closely with Hopewell. As the gentleman from Virginia testified this morning, they are using that as a model throughout the State of Virginia.

Senator **Lautenberg**. EPA and Hopewell and EPA and the States are really equal partners in this venture, right?

Mr. **Makris**. In the sense of bringing technical assistance to those locals, we consider that we both have major responsibilities, but, obviously, it is important to try to get to the States who can then do the multiplier on to the local governments.

However, in order to assure that at least there is some sense of direct relationships, we have asked States to identify a priority area, for example, where they might like us to work. More than half of the States, maybe three-quarters of the States, have identified those kinds of priority areas, and we are working through our regional offices very closely with them.

The kind of technical assistance we are also trying to provide is in the form of documents like this, like the orange book, like the green book, some materials that deal with how does one evaluate the risks of various priority chemicals within the area. So, we are providing that on a continuing basis—teleconferences, workshops, speaking to dozens of people.

Some people consider that Title III, at least in my family, might be the first Federal law to be named as a co-respondent in a divorce trial in that we are out doing so much work on the road trying to help the State and local governments understand the meanings of this law.

So, I think there is a tremendous amount of hands-on technical assistance. Is there enough? There can never be enough, because there is just an enormous task before us.

Working with FEMA, the Department of Transportation, the United States Coast Guard, using all of the training mechanisms that each of those agencies have, we have done stand-alone packages, telecommunications packages which can be handed out and used at the local levels.

I am not going to contradict our State people today who said we are not doing enough. We are just doing all we can.

Senator LAUTENBERG. If someone can't get to a conference because the agency doesn't provide travel expense, that certainly flies in the face of the statement that we are out there doing whatever we can. I am not suggesting that things haven't been done. But you have a lot of work to do.

A lot of it, however, depends upon how much effort you put into the collection of this data, to the awareness factor that exists out there in the local communities to say that this is a serious deadline that we are trying to meet and that you have to have information of decent quality. It is going to take a major effort.

However, the estimate of the size of that effort is something that I would have hoped would have come out of the agency in sufficient time to say that you don't have enough, and that in the regions, you want your people to do more, that you wanted them to cooperate with the States, the local communities.

When you are talking about reaching as large an audience as we have to, perhaps perfection is hard to achieve, but at least there ought to be a bite-sized chunk taken out of it.

Mr. MAKRIS. Senator, may I make one more comment, please?

Senator LAUTENBERG. Yes.

Mr. MAKRIS. It is clear that the plan is a very important document. It has a date, it has some descriptions, and it is identified within the law. But the other component of this law that you put into place is an important process component. It suggests that the publication of a sterile plan that didn't go through the process you identified, the process of 10 or 15 different kinds of local groups being involved, is not an adequate plan at all because it didn't meet the process requirements.

Many of the States—we talked about the State of New Jersey with the 500 and some odd districts that needed to be formed. Only 388 have been formed, and all those 388 probably don't have all of the necessary components to truly develop an integrated and different kind of contingency plan at that local level.

I think it would be very easy for the Federal Emergency Management Agency with their planning structure to pump out plans that slavishly meet that date. But it is somewhat more difficult to get people who have not customarily dealt with each other to deal with each other toward that objective of a plan. And to have a plan that doesn't involve industry, doctors, elected officials, and others communicating, as you demanded in this law, may take a bit longer.

We recognize that it is preferable to assure we have a process. It is also important that we have plans.

Senator LAUTENBERG. What do you think has to be done to assure the adequate handling of public inquiries about the health effects associated with the emissions data?

Mr. KIMM. That is going to be quite a task. The agency is at the moment, in concert with the States which we anticipate will be the first recipients of many of these inquiries, preparing a variety of support materials. For example, health assessment documents that have been generated by the State of New Jersey and peer reviewed.

There is some capacity at the State and regional level to conduct what is typically called risk assessments. The States' drinking water programs have been doing this type of waste for years. RCRA and Superfund staffs have significantly added to that capacity in recent years.

However, clearly, there is going to be more information on chemical releases in more communities than has ever been available before. The scientific capacity to answer the hard questions, what is the significance of the risks posed by this facility, are fairly complicated to deal with. We are talking about average annual emissions which, as one of the witnesses this morning mentioned, need to be looked at very carefully before making specific risk assessments.

I think this is going to be an enormous task that will emerge in the future and for which we are doing a minimum amount of work now. This is an area in which I think we are not properly prepared for the future.

Mr. PORTER. I think, Senator, also that industry and localities are going to have to deal with this. Some of the large companies, for example, are trying to get prepared for this kind of question themselves, because I think a lot of this, properly, will be directed at specific companies to say what does this mean. They will need to help with some of the information themselves as well as the State and EPA. So, it is going to have to be a joint role for all of us.

Senator LAUTENBERG. Dr. Porter, will your office be continuing and improving the process started by the legally required prevention study?

Mr. PORTER. Yes, we will. You are talking about the Byrd study that we just completed?

Senator LAUTENBERG. Right, the study required by section 305.

Mr. PORTER. Yes, we do want to continue that process. I am sure we will get a lot of comment on the study itself. It is just coming up here in a few days. However, as I indicated in my opening remarks, I think the ultimate goal of an awful lot of this is going to be prevention, and we are not quite sure what form that is going to take yet, but we do want to have some dialogue after that study gets up here.

Senator LAUTENBERG. Thank you all very much for your testimony. The message that comes through loudly and clearly is that we have a major task ahead of us, one that wasn't designed without requirement by the States and the local communities for help and assistance.

The incidents that triggered off the interest and the demand for this kind of information, for this kind of warning system, this kind of response system are real incidents. We have too many recorded incidents now in our communities, and we are not able to respond appropriately.

I think of my personal visit to a household in an area of Linden several years back. I learned that a woman with children had no idea what she might do when a noxious cloud came over, and they came over frequently: run inside, run upstairs, downstairs, cover their faces, open the windows, close the windows. This is a real concern, and we know that these accidents can cause death and injury of fairly serious proportions.

So, we have concrete reasons for this program. We have the law that enables us to respond. And what we have not yet seen is the kind of planning or commitment from EPA to get the job done.

I haven't heard enough that persuades me that EPA has made sufficient requests for resources or taken the necessary steps to implement the law and meet its deadlines.

I would urge you to get on with this job. I know you have many things to do. I am here to tell you that the demands are real. We are going to be looking to you, Win, and your colleagues, to get this job done, to assure that there is a decent quality of information out there.

I thank you very much for being here. I would urge you to do more.

Thank you very much.

Mr. PORTER. Thank you, Senator.

Senator LAUTENBERG. Today's hearing is adjourned.

[Whereupon, at 12:17 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

[Statements submitted for the record follow:]

Working for the Nature of Tomorrow.
NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

STATEMENT OF
GERALD V. POJE
OF THE
NATIONAL WILDLIFE FEDERATION

BEFORE THE SENATE SUBCOMMITTEE ON
SUPERFUND AND ENVIRONMENTAL OVERSIGHT
UNITED STATES SENATE
AT

HEARINGS ON
IMPLEMENTATION OF THE EMERGENCY PLANNING AND
COMMUNITY RIGHT-TO-KNOW ACT

MAY 26, 1988

My name is Gerald V. Poje. I am the environmental toxicologist for the Environmental Quality Division of the National Wildlife Federation ("NWF"). The National Wildlife Federation is the nation's largest conservation education organization, with over five million members and supporters nationwide, and with affiliated organizations in 49 states plus Puerto Rico and the Virgin Islands.

I thank the Chair and members of the Subcommittee for the opportunity to provide oral and written testimony on the implementation of Title III of the Superfund Amendments and Reauthorization Act ("SARA"). The Federation lobbied intensely for passage of SARA, and for more than a year, NWF has worked to assure that key provisions of the law are implemented fully. The

Emergency Planning and Community Right-to-Know Act, better known as Title III, has been a particular focal point of our efforts. Our work is part of a larger effort by public interest groups coordinated through an informal Working Group on Right-To-Know which links representatives of national, state, and local groups on Title III issues.

NWF commends Chairman Lautenberg and the members of the Subcommittee and full Committee for their strong support in passing SARA. We also thank Senator Lautenberg for holding this hearing to oversee the nation's progress in achieving Title III's goals.

I. Summary

Just this month we have witnessed tragic chemical accidents at Henderson NV and Norco, LA. Immediate estimates indicate: 9 dead, more than 250 acutely injured, and damages of over $70 million. These are not isolated incidents. Data compiled by New York's Attorney General show an increasing rate of chemical accidents. In addition EPA's preliminary assessment of chemical accident preparedness, as required under Section 305(b) of SARA, shows gaping holes in emergency planning at individual plant facilities as well as in the surrounding communities.

While many individuals in EPA, state and local government, organized labor, public interest groups and industry have worked diligently to implement Title III, a tremendous increase in effort must occur before adequate emergency planning and community right-to-know is a national reality. In particular, NWF recommends five areas for national focus:

1. Public Education and Involvement Must Be Increased. Citizens must be informed of their Title III rights. The effectiveness of State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) to support public involvement in Title III must be evaluated and improved. Technical expertise must be available to conduct and review hazard assessments and safety audits.

2. Accountability For Implementing Title III Must Be Improved. EPA should assess whether SERCs and LEPCs are functioning effectively to improve chemical safety. Steps must be taken to assure that reporting of Title III data is accurate and comprehensive. Information needs to be computerized and disseminated to a wide audience. Public access to data held and managed at LEPCs, SERCs and at regional and national EPA must be assured.

3. Comprehensive Enforcement Must Be Assured. EPA must assume the major role in enforcing all Title III provisions. Increased chemical engineering inspection capability must be developed within the agency. Training of agency personnel for

Title III enforcement and education on citizen suit provisions should be provided.

4. EPA Needs a Long-Range Plan. Better coordination is necessary at headquarters and in the regional offices, including a single integrated implementation plan with mutually supportive enforcement and compliance strategies. Better coordination with state and local governments is necessary. EPA should evaluate the strengths and weaknesses of the Title III data and use the authority of the legislation to gather additional information on important chemicals in commerce and to expand the scope of facilities covered by reporting requirements.

5. Title III's Budget Must Match its Objectives. Improving chemical accident preparedness and disseminating information to reduce chemical risks from routine emissions are prevention strategies that pay. The Title III budget should be expanded to insure delivery on items in short supply, such as:

-- Computers and software for emergency planning
-- Technical Guidance Documents for states and the 50,000+ LEPC members
-- Training and testing programs for environmental planning
-- Toxic Release Inventory Database computerization and access
-- EPA outreach and enforcement

II. How Title III Expands Citizen Rights To Chemical Safety

Over the last decade public trust in governmental and industrial management of chemical safety has diminished. In the mid 1970s, buried chemical waste at Love Canal, New York alerted the public to widespread threats from industrial chemicals. The nationwide search for waste dumps (currently estimated as 27,000 sites) quickly introduced unsuspecting Americans to the fact that industry had left a legacy of chemical contamination in neighborhoods around the country. By 1982, federal EPA mismanagement at "Superfund" sites, concurrent with a growing perception of contamination risks had further diminished public confidence in governmental control of chemical waste streams.

Catastrophic accidents at pesticide manufacturing facilities in Bhopal, India and along the Rhine in Switzerland, at petrochemical plants in Mexico, and at Chernobyl's nuclear power plant in the USSR further undermined public confidence in industrial processes. Past approaches to chemical risk analysis relying solely upon the expertise of federal government regulators and their industrial counterparts proved unacceptable to national legislators. Within this climate of distrust, in late 1986 Congress expanded the authority and budget for expedited cleanups according to more stringent health standards, and created the Title III blueprint for chemical industry's public accountability.

Title III was conceived with four broad provisions: two in the area of chemical emergencies (emergency planning and emergency notification), and two in the area of information access (right-to-know provisions and the toxic release inventory database).

A. Emergency Planning.

Conventional local emergency preparedness plans from civil defense programs did not address specific aspects of chemical accidents. Title III markedly improves upon previous emergency programs by requiring details on potential chemical release scenarios, and by subjecting the information to public scrutiny.

Last April, State Emergency Response Commission (SERCs) were appointed by Governors to improve coordination and planning at the local level. According to Section 301 of SARA, these SERCs must designate planning districts, select members to serve on Local Emergency Planning Committees (LEPCs), and develop procedures for receiving and disseminating information on emergency plans, material safety data sheets, the list of extremely hazardous substances, storage inventory reports, and toxic release inventory reports.

B. Emergency Notification.

In response to chemical emergencies, such as Union Carbide's aldicarb oxime accident at Institute, WV, Congress enacted Title III's Section 304 which mandates stringent reporting requirements for emergency chemical releases involving any of several hundred chemicals. Reports must detail the chemical, time, amount and duration of release, the environmental media receiving the release, potential adverse impacts upon health and the environment, any evacuations which occurred, and the name and address of the facility contact. Thus, an accessible library of accidental releases and responses is created for each state and local district.

C. Community Right-to-Know.

In 1970 knowledge of workplace chemical exposures prompted implementation of the Occupational Safety and Health Act (OSHA) communication program, under which workers gain access to health and safety information regarding chemicals in their workplace. Title III extends communication beyond the factory walls through right-to-know provisions intended to improve planning by local fire and chemical safety personnel. Facilities must report the amounts of OSHA-covered chemicals present in the plant during the year, average daily amounts, location and storage conditions, and whether disclosure to the public of this information is denied.

D. Toxic Release Inventory.

The most forward-looking aspect of Title III is the Toxic Release Inventory, an information database on the annual routine emissions of more than three hundred widely-used chemicals in the manufacturing and processing sector of our economy. For each covered chemical reports are required on the geographic location and type of facility releasing the chemical, quantities of the chemical entering each environmental medium, the waste treatment or disposal methods employed, and the efficiency of each wastestream treatment. Governmental officials and citizens can use the toxic release inventory information for long term environmental planning purposes.

While these provisions may require federal EPA, state governments and industry to subdivide their programs, the average citizen living near an industrial facility will approach environmental safety in a more holistic and site-specific fashion. Citizens will strive to use the Title III tools to reduce the risks of chemical exposure in their communities.

IV. Why Title III Needs To Be Implemented

Improvements in chemical safety planning and accident prevention are long overdue. Recent tragic accidents, accident trends and a national survey of chemical emergency preparedness emphasize the urgency of implementing Title III's provisions.

A. Pacific Engineering Accident in Henderson, NV.

On May 4, 1988, the community of Henderson, Nevada was rocked by a series of powerful shock waves when an ammonium perchlorate explosion erupted at the nearby Pacific Engineering plant. The accident, the origin of which is still under investigation, killed two people, injured at least 250 others, and destroyed the neighboring food factory. Shock waves from the blasts -- one of which registered 3.5 on the Richter scale in Pasadena, California -- shattered windows for miles around, blew automobiles into ditches, and ruptured underground gas lines, resulting in an estimated $73 million in total damages.[1] The smoke cloud billowing from the explosion and ensuing fire carried numerous toxics into the atmosphere -- including lead oxide and hydrogen chloride. The National Weather Service tracked the cloud as far as Salt Lake City, over 350 miles away from the accident site, where it was estimated to be 15 miles long and 6000 feet thick.

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[1] Personal Communication from Robert King, Nevada Emergency Response Commission, on May 12, 1988.

B. Shell Oil Accident in Norco, LA.

Less than 24 hours after the Pacific Engineering accident in Nevada, residents of Norco, Louisiana were jarred from their sleep by a massive petrochemical explosion at the local Shell Oil Refinery. The blast ruptured a catalytic cracker, which converts crude oil to gasoline. Seven people perished in the accident, and 42 more were injured -- 4 critically. Two days before, Roger Fowler, manager of the Shell Chemical Co. plant in Geismar, Louisiana and spokesperson for the Ascension, LA Community Awareness and Emergency Response (CAER) group assured residents during an interview with a Baton Rouge paper about air emissions and the Title III program,[2] that the threat of chemical accidents in the state was low due to the safety precautions taken by chemical plants.

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[2] T. Talley, "Plants plan to study air quality," Morning Advocate, Baton Rouge, La., Friday, May 6, 1988, p. B-1.

C. Trends in Chemical Accidents in New York.

One state has collected data to verify an increasing trend in chemical accidents. In New York, Attorney General Robert Abrams' office has compiled data on accidental toxic chemical releases in the state for the past several years. Statistics recently published by the office[3] revealed that more than 992 toxic chemical accidents were reported in New York during the first nine months of 1987, causing more than 148 injuries and forcing the evacuation over 1,200 residents. By conservative estimates, at least 500,000 gallons and 84,150 pounds of toxic substances were accidentally released into the environment during that period. The Attorney General's report also showed a steady rise since 1983 in the average weekly rates of toxic chemical accidents in the state. In particular, the report emphasized that the 1987 rate, at an average of 25.4 accidents per week, is almost double the 1986 rate of 12.9 per week. Although Mr. Abrams noted this increase may in part reflect better reporting by industry, he stressed:

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[3] "Abrams Cites Sharp Rise In Toxic Accident Reports: Joins In Call For Prompt Action By New York Senate", Monday, January 11, 1988 press release from the Office of New York Attorney General Robert Abrams.

> "These are disturbing numbers. Since the tragedy at Bhopal, India, in 1984, no one needs to be reminded that toxic chemicals can turn a minor incident into a terrible catastrophe. Three years later, people are still dying from the effects of Bhopal. We in New York cannot afford to risk such a disaster."

D. National Profile of Preparedness.

While state accident trends may reflect a regional need for Title III implementation, a preliminary EPA profile on preparedness emphasizes the national urgency for emergency planning. Section 305(b) of SARA requires EPA to review emergency systems for detecting, monitoring and preventing the release of extremely hazardous substances at representative facilities that produce, store or use these materials. EPA's study constitutes a snapshot of fewer than 150 facilities handling less than two dozen of the 366 chemicals listed as extremely hazardous chemicals by EPA. Independent verification of questionaires by EPA engineering teams occurred at only 7 facilities[4].

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[4] This report which should alert many communities to the need for more rapid preparation of local emergency plans is not currently available. The final report, which was due April 17, 1988 has been delayed during review at the Office of Management and Budget.

Preliminary results indicate that many facilities were unaware of the potential for major chemical releases, unfamiliar with appropriate safety management and terminology, and unaware of available prevention procedures and technologies, such as redundant controls, flares and scrubbers. EPA also found that formal training in hazard evaluation and loss prevention is infrequent, and many facilities still depend upon their workers' sight, smell and hearing for detection of releases, despite the fact that analytical monitoring technology is currently available for some extremely hazardous chemicals in wide use. Once a release is detected, many facilities lack standard procedures for notifying the community and gathering information on the plume location and dispersion patterns.

Adding to the public's endangerment is the lack of preparedness in many communities. Few communities have invested in advanced communications warning systems. Some communities even lack provisions to alert institutionalized citizens. Many communities have no written plans for communicating with the general public, such as preplanned warning messages and public information programs. In general, few communities have had extensive contact with the chemical facilities in their midst, and few have developed comprehensive plans and procedures to guide emergency responses.

V. What Needs To Be Done

Communities throughout the United States are threatened by exposure to toxic chemicals either through catastrophic releases during chemical accidents or from the chronic "routine" emissions of inefficient processes. In Title III, Congress sought to improve our capability to assess the chemical hazards in our communities and to plan for the reductions of those risks. While many individuals in EPA, state and local government, organized labor, public interest groups and industry have worked diligently to implement Title III, a tremendous increase in effort must occur before emergency planning and community right-to-know is a reality. In particular, NWF recommends five areas for national focus:

1. Public Education and Involvement Must Be Increased.
2. Accountability for Title III Implementation Must Improve.
3. Comprehensive Enforcement Must Be Insured.
4. Long-Range Plans for Title III Must Be Developed by EPA.
5. Funds for the Title III Program Must Be Appropriated.

A. Public Education and Involvement Must Be Increased

Title III imposes new national burdens of responsibility: upon industry to reveal chemical usage; upon state and local governments to receive and report upon this information; and upon the U.S. EPA to generate inventories of information. However, at the heart of the Title III program is the opportunity for responsible citizens to promote chemical safety planning in their communities. Under this landmark law, citizens are offered a prominent role in assuring local industry compliance with Title III provisions, participating in emergency planning and testing, evaluating the risks of routine chemical emissions, and developing control options. If the public is to meet this challenge, the institutional barriers inhibiting full community participation in chemical management must be overcome.

1. The Public Must Be Informed. Despite more than a year of outreach efforts, many Americans remains ignorant of Title III. EPA has held a national teleconference, cosponsored several regional workshops, and prepared fact sheets, technical guidance and videos. However, according to EPA's Chemical Emergency Preparedness Program Hotline from July, 1987 through February, 1988 the regulated community accounted for 40-60% of the nearly 23,000 calls registered by the hotline, while public interest community and citizens accounted for less than 5% of the

telephone inquiries. Sizable increases in EPA outreach efforts targeted towards the general public are warranted. To the best of our knowledge, only one state, Kansas, has sought to educate its citizens about their Title III rights through the use of public service announcements on radio and television.

2. SERCs Must Include Private Citizens. Jim Makris, EPA's director of emergency planning activities, has characterized successful SERCs as those constituted with broad representation. However, in many states the representation is a narrow one. According to the National Governors' Association's recent report[5], only 10 states have private citizen representation on SERCs, and five states have sequestered SERC administration in a single state agency[6]. EPA must evaluate the effectiveness of existing SERCs and recommend improvements. Private citizens must be assured representation on these important committees.

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5. National Governors' Association, The Emergency Planning anf Community Right-To-Know Act: A Status of State Actions, April, 1988.

6. Even NGA's analysis must be treated cautiously. For example, NGA described the leader of the Louisiana SERC as a private citizen. However, for the past year the SERC leader was a prominant member of the Louisiana Chemical Manufacturers' Association. Furthermore, Louisiana's new Governor has not yet issued an executive order creating and naming membership to the SERC. Therefore, technically one of the major petrochemical states has no SERC.

3. Local Planning Districts Must Be Local. SERCs are responsible for designating geographical subdivisions for which emergency plans will be prepared. Given the clear intent of Title III to involve many individuals in chemical emergency planning for their community, multiple districts would be anticipated. Unfortunately, the present reality does not match the goals of Title III in most instances. New Jersey has adopted the "grassroots" approach by identifying 588 planning districts. In contrast, Georgia, the largest state east of the Mississippi, has avoided public participation by naming the entire state as a "local" district. EPA must evaluate the district designations for each state, and recommend changes to achieve successful emergency plans. Single state districts should simply be prohibited.

4. LEPCs Must Have Broad Representation. By October, 1988, local committees must draft chemical emergency plans which include: (1) identification of facilities and transportation routes for extremely hazardous chemicals, (2) emergency response procedures, (3) designation of community and facility coordinators, (4) emergency notification procedures, (5) methods for determining chemical releases and their impact, (6) identification of emergency response equipment and facilities, (7) evacuation plans, (8) description of training programs, and

(9) community exercise schedules for the plan. Such planning and emergency exercises can succeed only with broad community support.

Under Section 301(c) of SARA, LEPCs:

> "shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle."

Community group representation has not proceeded according to the Title III goals. In some instances Chambers of Commerce members represent community groups. In other instances, citizens have encountered resistance to their efforts to join the LEPCs. EPA has failed to investigate citizen representation and participation on LEPCs. It must do so!

5. Technical Assistance Must Be Available For LEPCs. For communities coping with the problems of hazardous waste at a local "Superfund" site, technical assistance grants are available to employ professional scientists to evaluate cleanup plans. Similar technical expertise is in high demand in each local committee, especially in developing detailed hazard assessments. Under Section 303(d)(3) of SARA, LEPCs are granted broad

authority to gather internal industry assessments to support their planning effort:

> "Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan."

For each chemical, hazard assessments will identify types of chemical hazards, vulnerability analyses for accidental releases, and risk analyses which lead to safety planning. Widespread dissemination of these hazard assessments for each chemical will facilitate transfer of safety technology across an industry. Unfortunately, at present, no matching grants are available. Therefore, in many communities safety engineers must assume the same role as volunteer ambulance crews or volunteer firefighters to assure chemical safety. The availability of technical expertise to conduct and review hazard assessments and safety audits has not been the subject of national or state surveys. Technical expertise must be made available to communities for emergency planning.

B. Accountability For Implementing Title III Must Be Improved.

Title III represents a departure from other environmental legislation in that a new state and local infrastructure is established and a wealth of chemical information is required to be gathered and distributed broadly. For the program to succeed, EPA must oversee the performance of SERCs and LEPCs, and assure the accuracy and comprehensiveness of chemical information collected. In addition, EPA needs to facilitate the management of information for use by SERCs, LEPCs and the general public. Finally, where responsibility for information dissemination is delegated, EPA must evaluate the effectiveness of this program.

1. SERC and LEPC Performance Must Be Effective. At the core of EPA's Title III program is reliance on SERCs and LEPCs to implement Title III provisions. To a large extent EPA's approach has not assessed whether SERCs and LEPCs are functioning effectively to improve chemical safety. In EPA's own survey[7] less than 70 percent of the more than 3500 designated LEPCs were functioning. Ten states had no data by which to evaluate their LEPC performance. Only 26 states attempted to predict LEPC compliance with the October, 1988 deadline for submission of local emergency plans, and the anticipated compliance ranged from 0 to 100 percent.

Additional problems were discovered in the area of facility compliance with the planning notification provision under Section 302. While approximately 37,000 facilities were in compliance nationwide, compliance estimates within the states varied from 5 to 70 percent. More than a dozen states had no information available regarding facility compliance.

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[7] U.S. Environmental Protection Agency. White Paper on Title III. April 25, 1988.

2. Data Quality and Quantity Must Be Assured. Chemical emergency preparedness and long term local environmental planning depend upon the quality and quantity of chemical information. EPA has the responsibility to evaluate the accuracy and comprehensiveness of the Title III data. Problems exist with the reporting and verification of the data. For example, the Material Safety Data Sheets and Hazardous Chemical Inventories submitted under Sections 311 and 312 respectively contain information essential to the development of emergency response and emergency plans. EPA's survey demonstrated that only 15 states had available information sufficient to assess the numbers of facilities reporting and to estimate compliance rates. In these states, compliance was generally less than 50 percent and ranged from 5 to 85 percent.

By July 1, 1988 regulated facilities will be required to submit Form R, the Toxic Release Inventory (TRI) to EPA. The TRI information will become the nation's first chemical-specific, multimedia database of emissions. The TRI database will be a powerful tool for citizens to use to evaluate the chemical risks in their community and set priorities for risk reduction efforts.

Similar uses of the TRI database for evaluating environmental quality will be apparent to national and regional EPA and state and local environmental officials. EPA must assure that all regulated facilities comply with the reporting for all Section 313 chemicals, that facilities accurately estimate emissions, and that independent chemical engineers verify the information.

3. Data Management Must Be Effective. Opponents of Title III's program for improved chemical safety frequently invoke the threat of a paperwork blizzard. Environmental information management must be viewed in the same light as other societal information management issues - namely, as an opportunity for cutting edge technological advancements uniquely suited to the future of the American economy[8].

Title III information needs to be computerized and disseminated to a wide audience. The current national database on chemical accidents is woefully inadequate. The Emergency Notification and Follow-up Reports under Section 304 need to be evaluated for their accuracy and their potential to inform emergency responders and planners. Emergency notifications should be gathered into national and state databases and merged with other accident data such as the CERCLA Section 103 reporting to the National Response Center and reports required under Department of Transportation regulations.

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[8] In 1946 the world posessed only one computer: the ENIAC. By 1956, 600 computers were in use, and a decade later this figure had grown to 30,000 computers. By 1976, an estimated half million computers were in commerce, and conservative estimates indicate several million computers in use today across America. Today's computer selling for a few hundred dollars is at least 20 times faster than ENIAC, ten times more reliable, requires 3600 times less energy, and occupies 300,000 times less space. W. Michael Blumenthal. The World Economy and Technological Change. Foreign Affairs, Vol.66 (3): 529-550.

EPA in conjunction with the National Oceanographic and Atmospheric Administration (NOAA) and private companies have prepared and pilot-tested user-friendly, emergency planning software to support LEPCs and emergency responders. Large amounts of data from the hazardous chemical inventory can be stored, retrieved and merged with local maps to facilitate hazard assessments and other critical planning decisions. Comparable computer software has been developed by Dupont to support submission of the toxic release inventory form.

EPA's Office of Toxic Substances is charged with assembling the toxic release inventory information into a computerized database which will be accessible to the general public in the spring of 1989. Health and safety data for each chemical will be available through EPA. Computer technology will enable all levels of society to improve the scope and quality of environmental decisions by merging this information with other geographic databases, such as the census data, the U.S.

Geological Survey's topographic relief maps, and even EPA's Graphic Exposure Modelling System.

For the TRI Database to be useful to the broadest community of users, the data must be presented in a user-friendly fashion, subject to flexible aggregation and disaggregation, analyzed by statistic testing, and subject to merging with additional databases. The TRI database must be managed so that citizens without computers can seek and receive TRI information comparable to that sought by computer users. Furthermore, the TRI data must be managed so that information remains publicly accessible by other means during the computer data entry period (currently estimated at 6-9 months after data submission).

EPA must undertake a thorough evaluation of the nature and extent of computer management of Title III data at the level of SERCs and LEPCs, and develop a plan to overcome this barrier to Title III implementation.

4. Data Access Must Be Assured. The ultimate goal of Title III's data generation and management is to inform environmental decison-makers, including the general public. If the public outreach effort is to be successful, national and regional EPA, SERCs and LEPCs must assure that data inquiries from interested citizens are answered promptly and completely. EPA, as the lead agency for Title III's administration, must evaluate public

access to data held and managed by LEPCs, SERCs and at regional and national EPA offices.

C. Comprehensive Enforcement Must Be Assured

Many of the Title III deadlines have come and gone: Section 302(c) facility notification (5/17/87); Section 303(d) identification of a facility coordinator (9/17/87); Section 304 emergency notification of a chemical release; Section 311 submission of material safety data sheets or chemical lists (10/17/87); and Section 312(a) submission of hazardous chemical inventories (3/1/88). As documented above, non-compliance with each of these provisions is a significant problem, and enforcement has not been used effectively to increase compliance. A comprehensive enforcement plan should include: (1) ultimate responsibility by EPA for enforcing all Title III provisions; (2) development of increased chemical engineering inspection capability; (3) training for Title III enforcement; and (4) education on citizen suit provisions.

1. EPA Has the Lead Role. EPA should assume the major burden for enforcement of Title III. While states and local governments can and should be encouraged to pursue civil actions against violators of Section 302, 303, 311, and 312, EPA is granted wider authority to pursue administrative and civil action

under these and other Title III provisions. Particularly at the outset, EPA should initiate Title III enforcement activity, targeting facilities in a wide range of industrial codes across the country. In addition, EPA should publicize all enforcement activities to promote voluntary compliance.

2. Inspections Must Be Performed By Chemical Engineers. Much of the Title III program requires an intimate understanding of chemical process safety at facilities which manufacture, store or otherwise use hazardous and toxic chemicals. Emergency planning documents, such as hazard assessments and safety audits, and the emissions estimates for the TRI database require a working knowledge of chemical engineering. Independent chemical engineering teams serving the goals of community chemical safety must assure that the data submitted for emergency planning, Section 312 and the TRI are accurate and complete. Field verification of Title III data also must be supported by chemical engineers.

3. Effective Enforcement Requires Training. EPA must assess the needs for and commit adequate resources to Title III enforcement at headquarters and at regional EPA offices. In addition, EPA must coordinate training for EPA personnel and state and local enforcement teams. Finally, EPA should not transfer responsibility to state and local governments until the

public is assured of the state and local commitment and capacity to pursue the enforcement of Title III provisions.

4. Provide Guidance on Citizen Suits. Title III allows any person the opportunity to bring civil actions against facilities for failure to comply with emergency notification provisions and submissions of material data safety sheets, hazardous chemical inventories and toxic release inventories. EPA and state governments presume the compliance with these provisions will increase with the advent of citizen suits. If this is to be achieved, EPA needs to prepare citizen guidance on initiating civil action for Title III enforcement.

D. EPA Needs a Long-Range Plan

In the first 20 months of Title III's implementation, EPA's program can be characterized as an understaffed reaction to rigid, but effective statutory deadlines. Existing EPA offices have divided the Title III pie: emergency planning responsibility is localted within the Office of Solid Waste and Emergency Response (OSWER), while the TRI responsibilities reside in the Office of Toxic Substances (OTS). By July 1, 1988 the first TRI reporting deadline will have passed, and by October 17, 1988 the first local emergency plans will be submitted, thereby marking the end of the initial phase of Title III.

During the next 20 months, Title III's future will be served best by a critical evaluation of the effectiveness of past actions. From this should emerge a long-range EPA plan to use emergency planning and right-to-know to augment existing EPA programs and develop new environmental protection initiatives.

1. Improve Coordination within EPA. The administration of Title III has the potential to promote stronger technical commitment to chemical safety by increasing the involvement of two program offices. However, better coordination is necessary at headquarters and in the regional offices. OSWER and OTS should construct a single integrated implementation plan with mutually supportive enforcement and compliance strategies. Similar coordination is necessary within regional offices, since only Regions VII and IX have delegated Title III programs under a single program.

2. Improve Coordination with State and Local Governments. Title III's implementation at the state and local level focuses upon the SERCs and LEPCs respectively. To develop effective emergency plans and to disseminate chemical information, LEPCs and SERCs must coordinate their work with existing state and local agencies, particularly where these agencies are not represented in the Title III infrastructure.

3. Develop Title III Interactions With Other EPA Programs. Title III's information has the potential to improve planning and

decision-making in other EPA Offices. For example, EPA should evaluate how the Office of Water could use the toxic release inventory to set priorities for watershed analytical sampling or perhaps to set more stringent, site-specific, water quality standards based upon regional chemical loadings. Similarly, EPA should integrate Title III enforcement activities with on-going efforts in the Office of Air Quality.

4. Plan Expansion of the Title III Program. Through on-going interactions with other EPA programs, the strengths and weaknesses of the Title III data will become apparent. EPA should be prepared to use the authority granted under Section 313 to gather additional information on important chemicals in commerce and expand the scope of facilities covered by reporting requirements.

E. Title III's Budget Must Match its Objectives.

The $73 million cost estimate for material damages resulting from the Henderson Nevada accident far exceed the federal budget for Title III implementation over the last two years. Similar cost estimates for material damages from Shell's Norco Louisiana accident are sure to dwarf Title III's existing budget. No amount of money can compensate fully for the loss of 9 lives and the psychological disruption of these two communities. What lessons should be drawn from these accidents? Improving chemical accident preparedness and disseminating information to reduce risks from routine chemical emissions are prevention strategies that pay.

Title III's emergency planning will not eliminate all chemical accidents. However, by designating LEPCs and SERCs, by mandating facility coordinators and by seeking chemical hazard assessments, national preparedness will be pushed to a new realm of accountability.

Specific items to implement Title III are in short supply:

- -- Computers and software for emergency planning
- -- Technical Guidance Documents for states and the 50,000+ LEPC members
- -- Training programs for local environmental planning
- -- Testing programs for emergency plans
- -- TRI Database computerization and access
- -- EPA outreach and enforcement efforts

Last year Senator Lautenberg and many others sought to advance the pace of the Title III program by supporting a $10 million appropriation in the continuing Budget Resolutions. Although the effort met opposition in the House, this year we need to redouble our efforts to assure adequate funding for this essential program. NWF and many other public interest groups look foward to working with this committee and others to achieve full funding for Title III.

VI. Conclusion

Title III has been described by EPA staff as "revolutionary". The program is more aptly characterized as "evolutionary" - a social adaptation whereby the public seeks better safety procedures to counteract growing chemical threats. Just this month we have witnessed tragic chemical accidents at Henderson NV and Norco, LA. Immediate estimates indicate: 9 dead, more than 250 acutely injured, repair of damages will cost at least $70 million. The task of improving chemical safety is overdue. Title III implementation must be assured.

CHEMICAL MANUFACTURERS ASSOCIATION

WRITTEN STATEMENT OF

GEORGE A. RODENHAUSEN

VICE PRESIDENT FOR ENVIRONMENTAL, HEALTH AND SAFETY AFFAIRS

HOECHST CELANESE CORPORATION

ON BEHALF OF

THE CHEMICAL MANUFACTURERS ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

U.S. SENATE

REGARDING TITLE III OF THE SUPERFUND AMENDMENTS

AND REAUTHORIZATION ACT OF 1986

THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

MAY 26, 1988

[illegible] M Street, NW • Washington, DC 20037 • Telephone 202 887-1100 • Telex 89617 (CMA WSH)

Good morning, Mr. Chairman and members of the Subcommittee. Thank you for inviting the Chemical Manufacturers Association (CMA) to provide testimony on the Emergency Planning and Community Right-to-Know Act, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

I am George Rodenhausen, Vice President for Environmental, Health and Safety Affairs for Hoechst Celanese Corporation, headquartered in Somerville, New Jersey. I am speaking to you today in my capacity as Chairman of the Title III Coordinating Group for the Chemical Manufacturers Association and as Chairman of its Health and Safety Committee.

CMA's member companies represent more than 90 percent of the productive capacity for basic industrial chemicals in the United States. CMA member companies and the communities in which they operate are among the thousands of facilities and communities that must respond to Title III.

CMA supported the passage of the Superfund Amendments and Reauthorization Act of 1986, which includes Title III, and was an active participant in the legislative debate that led to its enactment. CMA's members view Title III as an opportunity for industry, government and the community to build bridges of understanding. CMA is working with EPA, and state and local agencies to ensure the effective implementation of Title III.

In my testimony, I will address the following points:

- The status of compliance with Title III from the perspective of CMA's member companies;
- The impact Title III will have on community emergency preparedness and the reduction of plant emissions;
- What EPA can do to effectively implement Title III; and
- The steps CMA is taking to assist in effective implementation of Title III.

Status of compliance with Title III from the perspective of CMA's member companies.

CMA is confident that there will be a high level of compliance with all aspects of Title III by its member companies. CMA has been working with EPA, state affiliate chemical organizations, the Council of Chemical Association Executives (CCAE), which is a group of 40 chemical industry trade associations, and our member companies to inform the chemical industry and our customers about the requirements of Title III and to provide them with assistance in complying with the law. That assistance has taken the form of workshops, publications, and other activities which I will discuss in greater detail later in my testimony.

Title III has a simple set of objectives - to require communities to be prepared to respond to emergencies and to give more information to the public about the chemicals that are used in their communities. To accomplish these objectives, however, requires an enormous expenditure of effort and resources. These compliance efforts are in addition to those already required under other federal, state and local laws and regulations.

In order for CMA to better understand the progress of its members in complying with Title III and the challenges they face, CMA recently surveyed its members about their Title III activities. While the results are not yet complete, the responses received to date do provide some useful insights.

The survey showed numerous initiatives in varied Title III activities, not just those directly relating to compliance. For example, virtually all respondents said they had engaged in a program to explain Title III to their employees and to local emergency planning committees (LEPCs). A large percentage also has reached out to explain the program to customers and community groups.

With respect to Section 311 and 312 inventory reports, over 80 percent have submitted Tier II reports voluntarily. The responses concerning the preparation of Section 313 reports demonstrate that substantial resources are required to comply with those requirements. Virtually all companies responded that they are actively preparing Section 313 reports, the average number being 104, with some companies reporting that they will submit nearly one thousand or more individual reports. The survey also showed that an average of eight person-years of effort will be spent by each company in order to comply with Section 313. This estimate is substantially higher than EPA's estimate, although calculated on a different basis, that its Section 313 requirements will cost each facility an average of between $12,900 and $15,000 in the first year. Nearly all companies responding to the CMA survey said that their company's Section 313 reporting effort included in-house training and attendance at CMA, EPA or other workshops, as well as actual preparation of the Section 313 reports. More than 1200 people attended CMA-sponsored workshops providing guidance on how to complete the Section 313 Toxics Release Reporting Form and estimating emissions.

CMA cannot speculate on the expected level of compliance by companies in other industries. However, in our work on Title III, many of us have become aware that there is a misperception that Title III applies solely to the chemical industry. As a result, many companies in other industries may believe that they are not covered by its requirements. It bears reiterating that Title III is not and was not intended to be only a law aimed at the chemical industry. For example, Section 313 covers facilities in SIC codes 20-39 which includes a number of manufacturing industries. Each of its major reporting provisions reach far beyond any one industry. Furthermore, with the expansion of OSHA's Hazard Communication Standard to companies outside the manufacturing sector, the reach of Title III will be broadened to thousands of additional facilities.

What does this mean in terms of the compliance effort by both the regulated community and the regulators? To CMA, it suggests the need for a broad-scale effort to educate companies and communities about Title III and its obligations. This program should be targeted at the different audiences it must reach, to explain Title III requirements and what information will be available as a result of the law. This educational effort is the cornerstone successful program aimed at compliance.

The impact Title III will have on community emergency preparedness and the reduction of plant emissions.

CMA's Community Awareness and Emergency Response, or CAER program, is the forerunner of much of Title III's provisions relating to community emergency preparedness. The CAER program was designed:

1) To develop a community outreach program and to provide the public with information on chemicals manufactured or used at local chemical plants. This is the community awareness component.
2) To improve local emergency response planning by combining chemical plant emergency plans with other local planning to achieve an integrated community emergency response plan. This is the emergency response planning component.

The CAER program demonstrates how facility resources can greatly improve local emergency planning. In many communities, CAER groups served as the nucleus of the local emergency planning committee (LEPC).

CMA has also established an Air Quality Policy that demonstrates a long-standing commitment by CMA member companies to operate facilities in a safe and responsible manner. This policy is designed to:

- o promote practices to minimize accidental releases and control process emissions;
- o address public concern about health effects from accidental releases and process emissions; and
- o develop better information on accidental releases and process emissions and their effects in order to assure fully informed action by both government and industry.

The CMA perspective on waste minimization is that reducing waste before it is generated--through source reductions, such as process modification, for example--is the most effective way to protect the environment. In addition, the association encourages recycling, re-use and treatment to reduce the toxicity of those wastes before they are safely disposed.

The practice of minimizing waste is not new to chemical manufacturers. Historically, companies have reduced their waste as a means of decreasing their manufacturing costs and improving their product yields. While chemical manufacturers have undertaken such efforts for years, the establishment of a formalized, industry wide program to encourage waste minimization is more recent.

In January 1987, CMA established its Waste Minimization Program to support the continuing efforts of its member companies to reduce waste, and evaluate the industry's progress on reducing hazardous waste.

The CMA Waste Minimization Program has four goals:

1. to further improve the protection of human health and the environment;
2. to improve public understanding of industry generation and disposal practices;
3. to support the development of effective government policies to encourage waste reduction among all industries; and
4. to make industry more competitive.

Consistent with our experience with the Air Quality and Waste Minimization Programs, we feel that the analysis required by Title III may present new opportunities to study sources of emissions.

CMA's Title III member survey reflects the positive impacts of these programs. Nearly 90 percent of the responding companies stated that their facilities expect to realize significant reductions in the releases they will report under Section 313 on July 1, 1988. The same number of companies responded that they have a waste minimization program or policy already in place.

What additional role will Title III play with respect to reductions in emissions? In my view, the most significant role will be improving the process of facility and community interaction. By providing data on releases, Title III facilitates a dialogue on emission levels and provides a means for communities to evaluate emission levels and the progress made in reducing them. Information reported under Title III will provide a basis on which to help evaluate and understand these efforts. It should be remembered, however, that these data alone, without accurate, comprehensible interpretation, will mean little, and that other information is necessary for them to be useful.

What EPA can do to effectively implement Title-III.

EPA has worked with both industry and environmental groups in developing rules to implement Title III. The Agency has been fair to all interests concerned in implementing Title III, and generally has met the deadlines for the promulgation of these rules.

With CMA, other federal agencies, industry groups and environmental organizations, EPA co-sponsored six Title III workshops in July and August, 1987. The workshops were a cooperative effort to provide attendees with information about Title III and its requirements.

EPA should continue to strengthen its efforts to assist LEPCs, because the focus of emergency planning must be at the local level. The Agency can act as a clearinghouse for LEPCs, providing information on successful programs in the areas of technical information, community relations and fiscal management.

EPA is best equipped to take the lead in providing information and guidance the public needs to use Title III data in a meaningful way. Included in this effort must be the development of health effects data and other information that will allow citizens to evaluate Title III information in a scientifically sound manner.

The fundamentals of impact, exposure, and risk assessment must also be provided to the public to help them evaluate the raw data reported under Title III. EPA must provide more health effects information in the context of community exposure, in addition to guidance on the use of dispersion models. The Agency is recommending use of its Graphical Exposure Modeling System (GEMS) and Integrated Risk Information System (IRIS) to aid the public in interpreting Title III data. CMA is concerned that these systems are not readily understandable by the average person and that the nature of the systems may not be applicable to Title III data. EPA should become more aware of the potential misuses of these models, and plan their distribution and training programs accordingly. The Agency should continue the upgrading and quality control of their modeling systems through technical external peer review and updates.

EPA should continue to explore ways to allow Section 313 information to be reported electronically. This will reduce the burden on both EPA and reporting companies, and will speed up the availability of the data to the public. The agency must, however, ensure the quality of the data put in the Toxic Release Inventory (TRI) that is not electronically submitted.

EPA also has an important role to play in the area of enforcement. The Agency must announce a clear and comprehensive strategy to enforce compliance. This enforcement strategy must be part of an overall plan which cordinates and includes both compliance education and enforcement. One without the other will not suffice.

The steps CMA is taking to assist in effective implementation of Title III.

CMA views Title III as an opportunity to be a leader in the implementation of both the letter and the spirit of the law. The CAER, Air Quality, and Waste Minimization Programs form the foundation of our Title III activities. Our objectives are to make Title III work at the local level and to ensure prompt and full compliance with the law. As part of its Title III activities, CMA has developed programs primarily in the areas of education - of industry, government and the public - and technical development and assistance.

CMA continues to stress the importance of compliance with Title III. A compliance manual was produced last year, outlining the requirements of Title III and offering compliance advice. Together with The CCAE and other industry organizations, CMA is educating the chemical industry about its responsibilities through publications, workshops and compliance alerts.

In the areas of technical development and assistance, our activities have extended beyon CMA members to our customers, the public, and to LEPCs. CMA prepared two sample cover notices that can be attached to a Material Safety Data Sheet (MSDS). One explains to the public what an MSDS is and what information it contains. To help inform customers and other users of our members' products about Title III, a second sample cover sheet describes the law and notifies customers about possible compliance requirements.

Many CMA member companies are providing assistance to LEPCs by helping them with start-up problems or budgetary hurdles. Companies are providing volunteers and other assistance in administration of the LEPCs, including computer availability, financial support, and equipment. We have found that the vast majority of LEPCs are in need of such support and are receptive to industry assistance. CMA member companies - individually and under the umbrella of state chemical industry organizations - are assisting LEPCs in emergency response planning and training. Indeed, many local CAER groups have become LEPCs.

In the area of education, a major objective has been the dissemination of information on risk communication -- how to present risk information to the citizens in meaningful ways so that they can make their own evaluations about the actual risk and take appropriate action. CMA sponsored a project involving leading experts in the field of risk communication. Together with industry representatives and CMA staff, they produced a manual containing risk communication guidelines, how to explain risk-related information, and presenting risk comparisons. A copy of "Risk Communication, Risk Statistics and Risk Comparisons" was provided to members of this Subcommittee.

CMA also published a "Title III Community Awareness Workbook" designed to help plant managers communicate Title III information with their communities. In addition, the CMA "Community Guide to Title III" explains the law and the responsibilities of industry, government, and the public to make it work. These publications were also provided to Subcommittee members. Accompanying videos have also been produced. CMA's "Title III Resource/User's Guide" lists our Title III educational materials and suggested audiences and uses. CMA has distributed more than 7,000 copies of EPA's "Explaining Environmental Risk", as well as numerous copies of the Agency's Section 313 brochure.

CMA conducted six regional communications workshops to give plant mangers and company communicators practical advice on how to explain inventory and emissions data. More than 1300 people attended these workshops. We are co-sponsoring similar Title III communications workshops with state chemical organizations. Many member companies are holding their own Title III workshops and have generated various Title III resource materials for use within their companies. We also plan to conduct a research program with the National Science Foundation on the effectiveness of our risk communication manual. In addition, CMA is funding research to identify the greatest concerns citizens have about chemicals in their communities.

In summary, CMA supports Title III and continues to work actively for its effective implementation. We are confident that there will be a high level of compliance with all requirements of Title III by CMA member companies and that many of them will go beyond compliance, and use Title III as a tool to facilitate communication between our facilities and the communities in which they operate. Title III however, is not a law that covers only the chemical industry. EPA, as part of its outreach efforts, must educate the many affected industries about the law's requirements.

CMA recognizes EPA's enormous effort to launch the Title III program in the face of a demanding schedule. EPA has solicited the comments of all interested parties in implementing the program. With the regulatory basis of the Title III program now in place, EPA must direct its resources to providing information to enable the public to put Title III data in a meaningful context.

CMA will continue its efforts to assist its members in their Title III activities and will continue to work closely with all who are charged with the implementation of the law. The chemical industry looks forward to continuing to work with you and other members of Congress on this important issue.

Implementation of
Title III SARA

Testimony Before
Superfund and Environmental
Oversight Subcommittee
Date: May 26, 1988
Washington, DC
Presented By:

Jorge H. Berkowitz, Ph.D.
Director
Division of Environmental Quality
Department of Environmental Protection

Mr. Chairman and members of the Superfund and Environmental Oversight Subcommittee. I should like to express my appreciation to the Chairman of this Subcommittee for providing this opportunity to express our views concerning the implementation of Title III of the Superfund Amendments and Reauthorization Act.

My name is Dr. Jorge H. Berkowitz. I am the Director of the Division of Environmental Quality within the New Jersey Department of Environmental Protection. The Division is responsible for air pollution control, radiation protection, chemical emergency response, preparedness and prevention, and community right to know. As such, we are the Division within the Department responsible for implementing the requirements of SARA Title III.

In July, 1986, the Department underwent a major reorganization. As part of that reorganization, the Department moved to strengthen its emergency response capability and invigorate its community right to know efforts. Further, it was decided that the newly formed Toxic Catastrophe Prevention program should be linked with both the Emergency Response and Community Right to Know programs, so that each could be mutually strengthened and enhanced by the others. This element has evolved to be the Department's Community Safety Program.

These efforts were believed to be very important for New Jersey. Our State is unlike most others. We are geographically small. However, New Jersey is the most densely populated State in the nation. We have a large, mature chemical industry. New Jersey employs more people in its chemical industry than any other state. We are second only to Texas in the dollars generated by our petroleum and chemical industries. A disproportionately large percentage of our population lives in close proximity to a chemical facility. In addition, the Department receives an average of 750 reports per month of various abuses to the environment. Approximately 500 of these are hazardous materials related and over 60 are significant enough to warrant a Departmental emergency response.

Therefore, chemical safety, prevention and preparedness is of utmost concern to our citizens and to the Department. Further, our citizens consistently demand to know the chemicals present in their communities and the risk and effects associated with routine and potential accidental releases of chemicals to the environment.

It was with more than passing interest that we learned of the intent and mandates of Title III SARA. The overall implementation of Title III is, the responsibility of the State Emergency Response Commission. Governor Kean, in an executive order, named his existing Emergency Services Advisory Council (comprised of the Attorney General, the Adjutant General of the Department of Defense, the President of the Board of Public Utilities, and the Commissioners of the Departments of Environmental Protection, Community Affairs and Transportation along with the Commissioner of Health and the Director of the Office of Emergency Management) as his State Emergency Response Commission.

The executive order names the New Jersey State Police, Office of Emergency Management as the lead for implementation of the Emergency Response provisions of Title III and the Department of Environmental Protection as the lead for implementing the Community Right to Know provisions.

ATTEMPTS TO MERGE STATE RIGHT TO KNOW PROGRAMS WITH TITLE III.

It has been said that the Community Right to Know portion of Title III was modelled after the New Jersey Worker and Community Right to Know program. Therefore, it was our fervent hope that combining our program with the mandates of Title III would be easy. Our hope was one linked to practicality. Indeed, the problems and havoc that would be caused by imposing a separate and distinct federal Right to Know program as well as a state Right to Know program upon our regulated industries, and the local agencies who are recipients of the information, would have been profound. The cry of over-regulation and duplicative regulatory programs could be well anticipated and, perhaps, even deserved.

Therefore, the State worked hard with the USEPA to make the requirement of the two programs as synchronous as possible. There were many meetings between our staffs trying to reconcile the differences in the chemicals covered, the information reported, the reporting thresholds, the industries regulated and all the other respective mandates of the two laws. To a large degree, we have merged a significant portion of the federal and state programs. However, differences remain and still are potentially perplexing to our regulated industries.

Details which were different under the federal and state programs were:

- report forms;
- list of substances which had to be reported;
- threshold quantities of substances which had to be exceeded for reporting to be required;
- industries which were covered; and
- deadline dates and schedules for reporting.

OVERVIEW OF APPROACH IN NEW JERSEY

New Jersey's approach in implementing Title III has been to work within existing frameworks wherever possible to minimize the need for additional funding, manpower, and other resources. This is a necessity because the federal legislation provides no major funding that would allow states to meet the costs associated with establishing a comprehensive Title III program. In New Jersey, both Emergency Planning and Community Right to Know programs were already established. The State elected to fulfill federal requirements through these existing programs.

The New Jersey Legislature carefully defined the requirements of community right to know. Select industries and industry groups were to complete hazardous substance inventory reports for materials that are of concern in the community. These fall into two categories. The first category is the Environmental Hazardous Substances which are either environmental contaminants, public health hazards, or both. The second category is the USDOT Hazardous Materials Table which are substances that might cause or contribute to an emergency situation and must be reported to local police and fire departments.

The federal community right to know inventory reporting required by Sections 311 and 312 is based on an occupational criteria, the OSHA Hazard Communication Standard. Many of these materials present no hazard in the environment or to the general public but only to workers. So much information is now received that the regulating agencies have difficulty deciding what information is relevant for decision making.

COMPLIANCE AND ENFORCEMENT

While the requirements for SERC and LEPCs are clear, substantially less clear is the states' authority to enforce the reporting requirement on industrial facilities covered by Title III. In fact, while the states are clearly required to receive the 311, 312 and 313 reports, they receive no authority from the federal law for enforcing compliance for those industries who do not report. Since it does not appear that EPA has the resources to enforce the federal program, EPA should consider developing a strategy to utilize state environmental agencies to enforce compliance.

In setting up the mechanism for Emergency Planning in New Jersey, each municipality and each county was declared a Local Emergency Planning District. This designation of 567 communities and 21 counties, requiring a total of 588 Local Emergency Planning Committees, was seen as a means of taking advantage of a well developed and existing emergency management structure. To date, 315 LEPC'S have been formed. We have no estimate of how many of these committees will have their contingency plans in place by October 1988. But what is known is that the majority of the chemical facilities will most likely be included in these 315 contingency plans.

PROGRAM UPDATE

NJDEP has received 1,301 notifications from facilities that are subject to Section 302 indicating that they are required to be involved in emergency planning. At this time, we do not know what level of compliance this represents. As we establish our 312 inventory data base, we will be better able to check on whether all the facilities that should be involved in emergency planning are indeed participating.

Section 311 required industry to supply the SERC, the LEPCs, and local fire departments with material safety data sheets (MSDS) or a list of substances for which they have MSDS's. The Department has received 929 submittals to date under Section 311. New Jersey does not place much emphasis on this reporting since we believe that we have better information already available on our own data base as a result of the New Jersey Community Right to Know program and on our Hazardous Substance Fact Sheets.

However, we could not ignore the requirement, since facilities would be liable for the information under citizen suit.

Section 312 required industry to supply the SERC, the LEPC's, and the local fire departments with an inventory of all the hazardous substances used or stored on their facility site. The section 312 Tier II inventory reports proposed by EPA were very similar to the reports which were required under New Jersey law. NJDEP altered the Tier II form to accommodate all the New Jersey required information and sent forms to over 18,000 manufacturers in the State. Our law gives industry 90 days to complete the forms and submit them to us. Consequently, the forms will not be due until June 9, 1988. We have already received 5,592 submissions and we expect to ultimately have a high compliance rate.

Although non-manufacturers will not be covered by SARA Title III Section 312 until March 1, 1989, the New Jersey program has sent inventory report forms to over 9,000 businesses covered by the New Jersey law. So far, we have received 6,788 submissions. These were due in the fall of 1987. Recently follow-up letters have been sent to these non-manufacturers reminding them of the need to report.

Section 313, the Toxic Chemical Release Inventory reporting provisions, requires industry to report on total releases to the environment of toxic chemicals used on site. NJDEP is mailing out EPA Form R along with a New Jersey Supplemental form to all manufacturers with ten or more employees. Over 8,000 businesses are in this category. The Department estimates that 2,000 facilities will meet the criteria of manufacturing, processing or importing over 75,000 pounds, or otherwise using over 10,000 pounds of the toxic substances.

The New Jersey Supplemental Form collects information on permits that the facilities hold under other Department programs so that we can crosscheck the data. It also collects throughput information as required by New Jersey law to facilitate a mass balance. The New Jersey Supplemental Form contains a certification statement which must be signed and acts as a negative declaration if the facility states that it is not covered.

STATE ENFORCEMENT EFFORTS

New Jersey has several levels of enforcement. First, there is data base checking. If a company has reported previously under New Jersey law that it has an extremely hazardous substance (for instance, chlorine) in a quantity greater than the Threshold Planning Quantity (100 pounds), obviously it must identify itself under SARA Title III, Section 302. If it has not, it is not in compliance.

The second level of enforcement effort is checking whether a facility, which is covered based on Standard Industrial Classification (SIC) code, has returned an inventory report. If it has not, it is sent a compliance letter by registered mail. If it does not respond to this letter, it may be issued an Administrative Order and a notice of Civil Administrative Penalty Assessment. The penalties for non-compliance under New Jersey law are $2,500 maximum, plus $1,000 per day, after an order has been issued.

The third level is quality assuring the inventory report for accuracy by conducting an inspection of the facility. Various resources will be used to make these compliance determinations. The Bureau of Hazardous Substances Information has field audit staff which averages 50 audit inspections per month. Field audits are initiated for various reasons; community or employee complaints, inaccuracies or other problems found during review of the survey, negative declaration on a report form for a facility within a SIC code that would be expected to use hazardous substance and random compliance checks.

Each county in New Jersey has a "County Lead Agent" who has some responsibilities for data management under the New Jersey Worker and Community Right to Know Act. These agents often target facilities for inspection since they are familiar with the local area and more apt to know which facilities may not have supplied us with accurate data.

Under SARA Title III, fire departments have the right to inspect any facility that submits an inventory report form under Section 312. We are looking forward to receiving information from the local fire departments about facilities which they believe have submitted inaccurate information.

The Division of Environmental Quality's enforcement element has four field offices. The inspectors conduct Right to Know audit inspections of facilities which they visit to check on air pollution compliance. The Bureau of Emergency Response personnel may also conduct some field inspections. Our emergency response staff prefer to tour facilities within their area so that they are aware of where and how chemicals are stored in the event an incident occurs.

The fourth level is to check whether 313 release information is accurate. These types of inspections have not yet been conducted. This is an area where, according to the provisions of Title III, EPA is preeminent. It is doubtful that EPA will be able to mount a serious compliance effort without additional resources or without state involvement or perhaps both.

The New Jersey compliance effort is closely tied to our outreach activities to the regulated community through trade groups. We believe that we receive much more accurate and complete information when the regulated community is thoroughly familiar with our requirements and our forms. A strong outreach effort aimed at trade groups in SIC codes that have the highest non-compliance rate coupled with assessment of a few penalties, will certainly get the industry's attention. We would recommend that EPA follow a similar strategy.

STATE FEE

New Jersey's Worker and Community Right to Know Act established a nonlapsing, revolving fund administered by the Department of Treasury. The Department of Labor annually assesses each employer covered by the law a fee of $50.00 or $2.00/employee, whichever is greater. Employers who do not use or store hazardous substances receive a refund. The money is dispersed according to a formula in the Act: Department of Health receives 40%; Department of Environmental Protection, 20%; county health departments, 15%; Department of Labor, 15%; and Department of Treasury, 10%.

One of the problems with this system is that SARA Title III covers all manufacturers and all non-manufacturers, while the State law covers all manufacturers and selected non-manufacturers. Therefore, New Jersey receives funding from only a subset of the covered industries. In addition, the federal program covers a larger list of substances, thereby increasing program data management costs.

PLAN FOR DATA MANAGEMENT

Currently, New Jersey Right to Know information is computerized in an mainframe system. This system is not particularly user-friendly, and is not now accessible on a 24 hour basis. The back-up to this is a tremendous filing system for paper copies.

The implementation of Title III, with increased outreach efforts and media coverage, has caused an increase in requests for Right to Know information. The Right to Know program requires ready access to the information collected from the facilities. An automated Right to Know information management system that will allow users to view data and generate reports easily is planned.

The Right to Know data management system will consist of data management program on a mainframe and on microcomputers in a Local Area Network environment.

The most current inventory information collected under New Jersey law and Title III, Section 312 will be accessible to users using dial-up modems and dedicated telephone lines. Direct access will be give to the Emergency Response Network: Bureau of Emergency Response, the State Police and the New Jersey Poison Control Center. Some system features are:

- 24 hour access for emergency responders
- multiple concurrent users for tracking facilities
- upload and download of data to mainframe
- generation of routine reports
- downloading of data subsets to floppy diskettes for further data study.

The data management system on the mainframe holds the chemical specific information, both current and historical. It allows for complex data searches and information requests. Some system features are:

- file updating of chemical-specific information
- upload and download of data from microcomputer
- generation of standard reports
- statistical analysis of historical data

- upload of 313 data from EPA
- potential of mapping with Geographic Information Systems (GIS)
- potential for data entry by electronic transfer or optical scan.

NJDEP's Right to Know data management staff is working with EPA's Office of Toxic Substances staff to assure that the information collected on the Toxic Release Inventory Form and under our State law is available to users in a consolidated, coordinated manner. To accomplish this, New Jersey will be obtaining a copy of the TRI data base which will be loaded on the Department mainframe to allow extraction of New Jersey's information from EPA into the Right to Know data base. We are relying upon EPA to provide this computer data base to us in early 1989. The demand from the public for this data is high. The State will have to invest approximately $200,000 to computerize this data if EPA can not enter the data in a timely fashion. We hope EPA can complete this function as scheduled.

IMPACT TITLE III IS HAVING

One of the most important effects that Title III has had is bringing people together to form a partnership in emergency planning and community Right to Know. OEM units and environmental units have been thrust together to implement Title III. There is a mix of people involved at the local and county level in LEPCs. Better involvement will produce better quality emergency plans. The value of planning is in the process and with more people actively involved, that process will work. Industry has been encouraged to take a proactive stance, to come out from behind the fenceline to provide information to the community and to work cooperatively with their LEPCs, State OEM and Environmental units.

By attaching the emergency planning and community Right to Know provisions to the well-known Superfund program there has been increased visibility of the program and increased media coverage. There is heightened awareness on the part of the regulated community as to their responsibilities, and there is heightened awareness in the community of the availability of information. This has undoubtedly helped us implement and re-emphasize our Community Right to Know program. Local efforts in Emergency Response planning have taken root. The significant resources of industry are being tapped to aid many activities in Emergency Response preparedness.

UTILITY OF 313 DATA

During the first few years of reporting, the data collected under Section 313 will be of limited use because of its questionable quality. The data will be based on estimates and may be off by an order of magnitude or more. For this reason, we strongly urge that it not be used for risk assessment.

However, the data can be useful to determine what chemicals to monitor and where to place the monitors. The data may be useful in developing control strategies and identifying "hot spots". Permit data can be verified and illegal emissions, unpermitted facilities, and unauthorized disposal practices identified.

In New Jersey, Right to Know data has already been used to verify air pollution permit data in the compilation of the emission inventory.

The data should be used to establish regulatory priorities, particularly to investigate the need for regulation of specific industrial classifications or particular toxic substances. New Jersey considers the waste minimization information so useful that we have made it mandatory on our forms and not optional as EPA has.

The national data base should allow monitoring and regulatory strategies to be developed on a regional basis, such as within a particular watershed or airshed.

SECTION 305 STUDY

Section 305 (B), of Title III, requires that EPA conduct a study and review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances. As required by Section 305 (b) the report is to include the status of current technological capabilities to monitor, detect, and prevent significant releases of extremely hazardous substances, determine the magnitude and direction of the hazards posed by such a release, and to determine the relative concentrations of constituent substances. In addition, the report was to include a review on the status of public emergency alert devices and a feasibility study on establishing, maintaining and operating perimeter alert systems for detecting releases at facilities which use extremely hazardous substances. The report was to include specific recommendations to Congress on establishing new initiatives to support the development of new and improved technologies.

At EPA's request, staff from the New Jersey Department of Environmental Protection participated in the Section 305 study. This participation included chemical safety engineers, involved in our Toxic Catastrophe Prevention Act program, who reviewed the industry survey and questionnaire prepared by EPA, accompanied EPA on the single site inspection which was conducted in New Jersey, and evaluated the information gathered from the survey. In addition, NJDEP management was involved in reviewing and commenting on the final report, The Review of Emergency Systems, which was to be submitted to Congress by April 17, 1988.

New Jersey has some serious concerns about the findings of the Section 305 report. Because of several mitigating factors, the report is inconclusive and will undoubtedly result in recommendations for additional study in many key areas. Specifically, we are concerned about the impression which may be given to the public regarding the accidental release prevention aspects of Title III. Without a doubt, Title III is not a program geared towards the prevention of accidental releases. However, the Section 305 study may give the appearance of release prevention, thereby providing a false sense of security.

Although the Department wholeheartedly supports EPA's activities regarding the review of emergency systems, we feel that much more needs to be done in the area of accidental release prevention.

ASSESSMENT OF PERFORMANCE OF EPA:HQ AND REGION

One difficulty in dealing with EPA on SARA Title III is that the law is managed by different offices within EPA. The potential exists that EPA will treat and represent the Title III initiatives as disjointed, non-integrated, separate activities. This could impose significant mistrust in a public which anticipates a comprehensive, earnest program in attempting a "democratization of chemical information".

New Jersey has worked directly and productively with EPA Headquarters. We believe that in the rush to meet the regulatory deadlines, the Regions have not been well-integrated into the implementation strategies.

The Regional offices could be very useful in establishing forums through which the Region, State, and LEPCs could interact. We have only recently started working with our Regional office. But it is clear that the Regions must coordinate their strategies and activities with the State. At the regional level, if this is to happen, either Title III activities must receive a higher priority or additional resources must be deployed.

EPA has developed some useful technical documents providing guidance to industry on methods to calculate environmental releases. It would be valuable to both agencies to develop a good working relationship at the technical level. EPA should offer training and guidance to states as well as industries. Training could be particularity valuable to state enforcement personnel. Certainly, EPA technical staff should be encouraged to continue participating in meetings (i.e. NGA, Focus groups) arranged by EPA for the states.

RECOMMENDATIONS TO EPA/REGIONS

1. Funding

Funding is required at all levels if serious, earnest implementation of Title III is to occur. If funding becomes available for the implementation of Title III, New Jersey would like to primarily channel the money to the county and local groups for many purposes: funding part-time positions, data management (computer hardware and software), basic office needs, and risk communication assistance.

Without some committment to funding, we believe that the potential of Title III, particularly in the Right To Know provisions, will largely go unrealized.

Aside from funding, EPA should continue to develop tools for use by State and local officials. These tools should be flexible enough so that they can easily be adopted at the local level. Tools should include: emergency response planning documents, Title III data management, guidance and model communication tools for local government, industry and citizens.

2. Integrated Reporting

EPA should look at ways to integrate the reporting under SARA with other data already being collected under other programs. Reporting requirements of all programs within EPA should be compatible with 313 reporting. The proliferation of media specific data bases is confusing and minimizes the effective use of the information. This represents an opportunity to attempt data centralization.

3. Title III coordination

A primary focus for Title III should be established at both headquarters and the region. Regional activities should be accelerated and coordinated with the states. Headquarters and the regions should expand their area of interest and involvement beyond Section 313. EPA should assign a higher priority to Title III implementation.

4. Allow existing state CRTK and ER programs to integrate into the Title III Program

EPA must be flexible in allowing pre-existing programs both in Emergency Response and Community Right To Know to function under the Title III programs so that duplicative, uncoordinated programs do not evolve.

5. Develop a strategy to quality-assure data reported under 313

Compliance and enforcement strategies must be developed by EPA which could also integrate state activities in enforcing, and assuring accurate 313 reporting.

6. Use of 313 data

The temptation to misuse this data would be seductive. Risk assessments based on 313 data should be discouraged. From the states view point, this data should only be used qualitatively to characterize releases and public exposure.

313 data should be used by EPA and state regulatory agencies to help them evaluate additional efforts and strategies needed to control and possibly regulate important environmental releases.

7. Enhance outreach efforts

EPA has initiated Title III outreach. We encourage these efforts and urge EPA to continue outreach to the regulated community, local agencies and the general public. Federal outreach efforts should be coordinated with the states so that all available resources are being properly utilized. All outreach efforts should explain the program as a whole before focusing on a specific portion.

8. Enforcement

EPA should provide guidance to states on how the provisions of Title III could be enforced through existing inspection programs. In addition, EPA should provide clear guidance to states on their authority to enforce Subtitle A provisions and Section 311 and 312 of Subtitle B. Certainly, any enforcement and compliance activities for 313 should be coordinated with the states. EPA should develop technical procedures to conduct 313 audits.

9. Establishing 313 Data Base

EPA has clear and direct responsibilities under Section 313 for establishing a comprehensive national data base of 313 information. New Jersey, even with its existing Right To Know data base, is looking to EPA to establish a data base in a timely fashion. New Jersey has elected to become part of the national 313 data management system in order to be consistent with the intent of Section 313. However, if EPA does not deliver a 313 computerized data base by early spring of 1989, the State may have to computerize it at an estimated cost of $200,000.

10. Section 305 Study: Accidental Release Prevention

Although EPA is not mandated to establish a release prevention program, we believe that EPA can be more active in the release prevention field by pursuing the following recommendations:

- vigorously support state-oriented accidental release prevention programs, such as New Jersey's Toxic Catastrophe Prevention Act - the first such mandated release prevention program of its kind in the nation.

- increase its focus on release prevention state-of-the-art technology, including equipment, control instrumentation, and recommended standard operating procedures and preventative maintenance programs for facilities which use extremely hazardous substances. These criteria can then be used by state, county and local agencies as they implement their own accidental release prevention programs.

We hope this information is useful to the Oversight Subcommittee as you evaluate the effectiveness and implementation of the Title III program. Title III has set the stage for much improved emergency response planning, and hazardous substance information sharing. But this is only an initial step. Continued support and leadership must be offered by the USEPA if Title III has a chance at reaching its fullest potential. We in New Jersey are committed to making, that happen.

Thank you for this opportunity to provide testimony.

TESTIMONY OF KARL F. BIRNS
MANAGER, RIGHT-TO-KNOW PROGRAM
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

PRESENTED

TO THE

SUBCOMMITTEE ON
SUPERFUND AND ENVIRONMENTAL OVERSIGHT
OF THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

MAY 26, 1988

I wish to thank you very much for the opportunity to speak to this Senate Subcommittee on Superfund and Oversight, regarding the Kansas Emergency Planning and Community Right-to-Know Program. I am senior staff person to the Kansas State Emergency Response Commission (SERC). Also, I serve as Program Manager for the Right-to-Know Program within the Kansas Department of Health and Environment. I have had the pleasure of speaking to my counter-parts from other State Emergency Response Commissions. We have compared notes on Title III and found that our states and others are facing a spectrum of various problems with implementing this federally mandated legislation. The State of Kansas has successfully addressed some of these problems, but continues to face others. We have learned by experience that Title III can be done. It will take time, and may even need to be modified or enhanced in the future. It will work if we want it to work.

We in Kansas, view the goals of the federal Emergency Planning and Community Right-to-Know Act favorably and will operate a program to meet these goals. However, there is room for shaping this program consistent with the economy, needs and temperament of the State of Kansas. In general, we support the right of members of the community to information regarding the risks chemicals represent, and the availability of this information for its many purposes including: citizen Right-to-Know, emergency planning, emergency response and the medical profession. Further, use of this information will be invaluable in developing public policy and giving credence to the various parties in the debate on the future transportation, storage, use and risks associated with hazardous chemicals in the work place and the community.

It is only through knowledge of the real world facts regarding these chemicals that informed decisions can be made at the government level and by citizens at the personal level. Also, this information may be correlated with information through emissions inventories, cancer registries and other sources so that we may determine appropriate public health policy to protect our citizens.

We in Kansas have attempted, and we hope successfully, to answer many of the questions which have been raised regarding Title III implementation. The State Emergency Response Commission in Kansas has been established under state statute and consists of the Governor, the Lieutenant Governor, heads of eight state agencies and members of the public and the legislature. It is an independently functioning body providing oversight of the executive agencies which have received direct implementing authority. The Division of Emergency Preparedness of the Adjutant General's office is the state agency responsible for training and emergency planning. The Kansas Department of Health and Environment is responsible for receipt of all notifications and reports (Sections 302, 311, 312 and 313), the maintenance of information data bases and providing public information and interpretation to any Local Emergency Planning Committee (LEPC) or citizen who requests it. Incumbent with this is a need to provide technical advice regarding chemical hazards, fate and effect and health information. The heads of both of theses agencies are also members of the State Commission. In order to be consistent with our existing emergency planning process under disaster preparedness the State Commission further designated the 105 counties in Kansas as Local Emergency Planning Districts. To assure cooperation at the local level we requested that County Commissioners nominate county residents for appointment to membership on the Local Emergency

Planning Committees. Our committees range in number from less than ten to greater than thirty members, but for efficiency's sake, we have notified the committees that effective with reappointment next year in October, we will limit membership to twenty individuals.

We have received general statewide acceptance of this program. Some rural counties are concerned with funding issues which I will address later on. It is our expectation that, after the emergency planning process has been completed for the first round, the State Emergency Response Commission and the Local Emergency Planning Committees will continue to implement their responsibilities and assure effective updates of these plans as necessary. We view this emergency planning as a dynamic process which will need to be continually assessed since our communities and chemical usage change over time. Further, in the first few years, this program will be changing since the initial information and planning process does not reflect new facilities that are required to report as threshold quantities are lowered or as new chemicals are regulated.

As I mentioned previously, funding has been viewed as a major issue both at the state and local level. We have brought this issue to the attention of the National Conference of Lieutenant Governors' and we understand the National Governors' Association (NGA) has now adopted a policy to seek federal funding for state and local efforts. In Kansas, we were fortunate that the enabling legislation and concurrent budgeting act proceeded through the legislature at the same time, so our state agencies were funded from the beginning. At the time this enabling legislation was moving, the State of Kansas was facing a severe fiscal crisis. Therefore, the legislature inserted a fee funding provision in the state law. Our current fee system was structured to recover 100% of the costs to the Kansas Department of Health and Environment of receipt and management of the information submitted under Title III. The State Emergency Response Commission, after due study, requested the Governor and Legislature to modify this 100% recovery to reflect an equal mixture of general revenues and fees to fund the program. We felt this more equitably distributed the costs of the program and its benefits over the industries submitting information and the general public, since all Kansans benefit from the added protection by this program (I should note that the cost of this program is only twenty cents per Kansan per year - a very small price to pay for all the good it will generate). The fees are not available, however, for use directly by the Local Emergency Planning Committees.

We at the state level are doing our utmost to support these committees through development of a data base management system, publication of informational documents and providing assistance with emergency planning and training. Some of the documents we have prepared include simplified brochures directed towards various affected parties including businesses, farmers, citizens, government institutions and emergency responders. We have also prepared our own forms for Sections 302 and 311, a number of guidance documents to explain compliance with Title III to reporting facilities and a compendium of SARA listed pesticide products used in Kansas.

Our Local Emergency Planning Committees vary from county to county. Many members, particularly in the urban counties, are paid city or county employees.

On the other hand, in rural counties, most are volunteers. We have required that their make-up reflect the various sections of the community identified in the federal law. To assist them, our Division of Emergency Preparedness has drafted an urban plan (Wyandotte County - Kansas City) and a rural plan (Washington County) which can be used as examples that meet the FEMA NRT 1 guidelines. The Local Emergency Planning Committees have expressed a varying level of interest in the program. One of our counties (Butler County) has gone so far as to use two honor camp inmates (Ph.D's) to assist in developing their plans. Some other counties would like to see state or federal action to provide funds for their activities, but are pushing ahead as best as they can with limited existing resources. Funding at the local level will be a major issue that must be addressed, particularly in the future if emergency planning reveals a lack of resources to deal with necessary emergency response.

At this point our local committees are focusing on emergency planning and techniques for managing the information they are receiving under Sections 302, 311 and 312. At the state level we have been working with EPA on how to deal with the Section 313 Toxic Emissions Inventory Information. We expect that this information, if available to the states, will also be made available through the state to the Local Emergency Planning Committees. Local health departments are actively being brought in to the Title III process. Their role includes identifying and assessing health risks and also interpreting potential health impacts to local citizens once the data on chemicals and their locations in the community are known.

The two major elements of Title III, Emergency Planning and Community Right-to-Know, depend on information management to effectively support them. Therefore, this has been an area we have focused on. We have gone the circuit regarding various hardware and software available to manage these data bases.

Our assessment indicates the four major cost centers for information management are: data entry, data management, hardware and software, in that order. Since data entry, management and hardware dwarf the cost for software, we focused on our existing resources in those areas. The IBM compatible environment is more extensively available in Kansas. We therefore looked for a system that would be able to handle the large amount of data submitted under Title III, as well as additional external data bases, and also provide Local Emergency Planning Committees with a tool for emergency planning and incident response and management. We currently have a request for bid out to the private sector which we hope will provide a pilot system to meet these needs. We are proposing that the Kansas Department of Health and Environment be the keystone for these data bases. They would receive the Title III reports and load that information into separate chemical data files and facility data files. In addition, the chemical data file will be tiered starting with material safety data sheets then going to chemical profiles and finally external chemical data bases and chemical information resources. These resources would include, for example, poison control centers and university experts. The state, using our IBM System 38 would be able to load this portion of the information on a county by county basis to each Local Emergency Planning Committee. The Local Emergency Planning Committees using IBM PC's would start with this information and they would load in local information on resources, local maps and other characteristics, strategic facilities, etc.

This information would then support the emergency response plan which will have the capability of being on line for incident tracking and management. This would include air dispersion modeling for contaminant plumes, tracking of equipment usage and other local needs such as population resettlement and evacuation and chemical response information. These PC's would interact with the Division of Emergency Preparedness in Topeka on a real time basis, so that Topeka would also be able to track incidents as they occur in the counties. These same data bases and incident management software would be provided to any local response unit within the county that had PC capabilities. This use of state resources for loading Title III data, and Local Emergency Planning Committee resources for loading the local data, makes the most effective use of personnel at each level of government.

The Toxic Emissions Inventory is an area where the State Emergency Response Commission is still waiting to see EPA's final proposal. The Department of Health and Environment has worked with EPA's contractors to prepare a document for use by state governments in interpreting the Section 313 data to the public. We propose that, in Kansas, the Section 313 data base be included as part of the state data base and referenced through facility files which will be loaded for Sections 302, 311 and 312. We would have a unique identifier for every facility which would cross-reference all information filed for that facility under any Title III reporting requirements and include crossreferencing other state maintained environmental or health data bases for that same facility.

Our Division of Emergency Preparedness and Department of Health and Environment have been doing yeomen's service to reach out to public citizens, facilities, emergency response personnel and others potentially affected by Title III. We have had conferences for Kansas businesses and industries, co-sponsored by our Chamber of Commerce and Industry. We have attended state fairs, trade shows and trade association meetings. The Kansas League of Women Voters has worked with the Department of Health and Environment to hold public meetings for citizens throughout the state. In addition to many Kansas originated publications (copies attached) we have had public service announcements on radio and TV and prepared a video tape of a five hour training conference for Title III compliance. This tape also includes facility compliance to the OSHA Hazard Communication Standards. We have scheduled training courses for Local Emergency Planning Committees in hazardous materials incident planning and response. Courses for first responders for incident recognition have also been held. This extensive outreach program has been instrumental in obtaining compliance in Kansas. We have shared our experience with EPA. We've sent our model response plans and public information to them, including our public service announcements, so that they could glean from them similar ideas for their program. This could be made available to other states as examples of things that can be accomplished. Other states have also contacted us directly to obtain this information.

This program is viewed in Kansas as a grass roots citizen program which serves everyone in the state. We are all exposed to the hazards and risks associated with chemicals in our communities. We must make informed decisions regarding these risks and the benefits chemicals and their use contribute to our lives. This kind of informed decision has to be based on valid, publicly available information. Our outreach program encourages reporting facilities to recognize that when a chemical incident occurs, they are the ones, their employees and their facility, that are most exposed to the dangerous effects of hazardous chemicals. With pollution exclusions on insurance policies, many of these facilities do not have financial protection against losses incurred from polluting discharges. The knowledge they gain from their self examination could foster enhanced prevention as well. Also, emergency responders are, by and large, volunteers in the State of Kansas. Our facilities have an obligation to themselves as well as these volunteers from the community to provide them with the necessary information to both enhance their ability to mitigate a hazardous chemical incident as well as to take steps to protect their own personal safety. This ethic of community volunteerism is a hallmark of our Kansas citizens. Volunteers for Local Emergency Planning Committees and those on the State Emergency Response Commission are protected under Kansas law as state employees from civil suits for their lawful actions. Volunteers are the heart and soul of our chemical emergency response program. A successful Title III program can only work where the citizens are aware of the goal of the program, how it works, the benefits to all. With this knowledge, they demand and support its operation.

Everything I have spoken of to you so far - Kansas's efforts in making the Title III program work - doesn't answer the question, Why is this program working in Kansas? To answer that we must recognize the Kansas experience as unique for some reasons, but one which may be applied to other states as well. The State of Kansas had no pre-existing Right-to-Know legislation when Title III came along. In fact, our state legislature had been considering, at that same time that Title III was being heard in Congress, a state Right-to-Know law. Hearings on that original state bill brought together a coalition of state groups which all supported the concept of Right-to-Know. This coalition (we call them proponents) was therefore positioned to work on similar legislation for Title III implementation in Kansas as soon as SARA was signed by the President. This gave Kansas not only enabling legislation but many other critical elements necessary for successful implementation of a government program.

For a moment, let's review some of the major criteria which can affect or enhance successful implementation of a new program:

1. Are the goals of the legislation clear? - There has been some confusion regarding what Title III is attempting to accomplish. This confusion seems primarily associated with a lack of clarity in the reporting requirements rather than in the goals of the legislation itself;
2. Difficulties in the implementation can occur when there is extreme diversity among those to be regulated and where these same persons are geographically spread out. This is certainly the case in Title III which, under its multiple reporting requirements, can touch almost every business in the state;
3. Where the target group is not required to change extensively and where those changes are very specific it is much easier to get compliance. In this

case, Title III imposes only an information reporting requirement on facility's and does not require extensive change or other actions on the facilities part. This of course contributes towards the potential for program success;

4. If within the state agency (and local government) there is a built-in bias in favor of the program and the agency's administration and support personnel are committed to achieving its goals, success is more probable. In the State of Kansas the Governor, Lieutenant Governor, Legislature and agencies involved have made Title III a priority and further have established new positions or offices solely committed to Title III activities. This personal commitment by the states leadership and program staff has probably been the key element in developing an enthusiastic and creative program;

5. Are needed seed resources available to initiate program activities? Our State Legislature has provided necessary personnel and budgetary support to the state agencies;
6. Other major elements are the support the program receives from the public, the media and the general conditions (economic or social) in the state which contribute towards success.

Most of the criteria that I have outlined are instrumentally affected by the outreach program. This is why it was the first major program function undertaken by the Division of Emergency Preparedness and the Department of Health and Environment. Through outreach, they have established a greater interest on behalf of the media and the public to support this program. By working with trade groups, including the development of regulations through an Ad Hoc regulation committee, they worked to assure, if not enthusiastic cooperation, at least a level of grudging respect and commitment to comply on behalf of industry. We have seen industry, and in particular the agricultural chemical supplier, embrace the goals of Title III. Some are even proposing significant private contributions to the counties to underwrite emergency planning and response.

In Kansas we have also had other intangible assets which have contributed to the program. Within the Legislature some members are personally involved with the program operation and keep a close eye on things. They are available to assist the state agencies in working with groups of divergent interest to bring them together towards successfully meeting program goals. I can't emphasize enough how critical it is to have this kind of personal commitment among legislators, department heads, and the Governors' Office in support of staff personnel to make things work at the state level. These same criteria are applicable at the local level. This is why it is so important for the state to do everything within its power to support local government's efforts and to respect local government's decisions regarding the extent of their abilities to commit resources to this program.

Time and patience are needed to nurture the growth of this program. It will take time to educate the reporting communities, it will take time to understand and apply the information that is gathered, it will take time to develop comprehensive emergency plans and emergency response capabilities. It will take patience to accept the limitation our resources place on the speed with which we can reach our goals. Soon enough we will learn if we can deal with a chemical disaster when it does occur.

The EPA has a role in the Title III effort. They are the federal agency with the major mission: to write regulations on reporting, establish lists of chemicals, handle trade secrets and receive Section 313 inventories. They also have the associated responsibilities to write the guidelines to be followed by all Title III players. Washington is sometimes viewed as distant and unresponsive to the needs of the states. We would like to see more technical assistance to states and their constituents, enhanced federally sponsored outreach , training programs, public information regarding program activities, assistance to states in developing uniform data bases including expanded support such as chemical profiles, and many others. We would like to see greater involvement of states in the EPA decision making process. Perhaps the efforts of EPA to work through NGA can coalesce state interests to form a "states" working group, similar to the state groups in other fields (STAPPA, ASTSWMO etc.). This could ensure both an enhanced cooperation and sharing of experiences among the states, and also an ongoing dialogue with EPA after the initial program issues are resolved and significant NGA efforts are inevitably redirected to other emerging policy areas.

I suggest to all, to draw from the Kansas experience those lessons which can be useful to you. Those who wish this program to succeed could speak to their Governor to receive the administrations support for the program. They can look within their own organizations for individuals who would like to make a

View outreach as a major element which must be accomplished to bring together a sensitized citizenry and educated reporting community to meet a common goal. Emphasize the program benefits to the public at large, the emergency response community and to the chemical facilities which are directly exposed on a daily basis to the risks involved with hazardous and toxic chemical use. Keep this level of interest alive and work with your various state and local agencies to create a favorable environment over the long term for program success. Recognize that we will continuously encounter problems that must be solved. Also, as a new program, we shall expect not perfection but best efforts from our staff. They will need our continued support as they devise innovative solutions to the new problems that will arise as we move towards an effective and responsive Emergency Planning and Community Right-to-Know Program.

RTKP/4

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT
Forbes Field
Topeka, Kansas 66620-0001
Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*
Gary K. Hulett, Ph.D., *Under Secretary*

State of Kansas
Emergency Planning Community Right-to-Know Act
First Year Accomplishments

1. Kansas Legislature passes and Governor signs KSA 65-5701 et. seq., Kansas Emergency Planning Community Right-to-Know Act implementing Title III P.L. 99-499, the Federal Emergency Planning Community Right-to-Know Act. Major Feature:

   a. tracks federal authority and regulations.
   b. authorizes fee system for state program.
   c. under state authority gives enforcement authority equivalent to EPA's to state agencies and Local Emergency Planning Committees (through county prosecutor).
   d. designates Division of Emergency Preparedness to implement training and emergency planning activities.
   e. designates Kansas Department of Health and Environment to receive reports under section 302, 311, 312 and 313; maintain this data base; and respond to public right-to know inquiries.

2. Kansas legislature appropriates approximately $500,000 for first year SFY 1988 program implementation: $380,000 to KDHE and $120,000 to Division of Emergency Preparedness.

3. Kansas Department of Health and Environment establishes a right-to-know with new staff (initially authorized at 11 employees dedicated to Title III duties).

4. Division of Emergency Preparedness adds two new employees to existing emergency planning staff for training and to assist LEPCs with emergency planning

5. Kansas Statute establishes State Emergency Response Commission with sixteen members including Representatives of the Governors Office, Lieutenant Governor, the Legislature, various state agencies, regulated facilities and the general public. Lieutenant Governor is elected chairman.

   a. SERC designates each of Kansas 105 counties as local emergency planning districts.
   b. SERC requests nominations from county commissions for membership and appoints members to Local Emergency Planning Committees.

6. KDHE with advice of Ad Hoc Regulations Committee (members include legislators, industry groups and KDHE) develops fees for submission of reports under Title III to pay for 100% of KDHE program costs. SERC recommends an equal share of costs be born by facilities and general revenue fund reflecting program benefits to all citizens of the state. Fee schedule now being amended.

	311 List	MSDS	Tier I	Tier II	313	Gen
Current Fees	$46	$12	$12	$17	$374	$3
Proposed Fees	$23	$6	$6	$9	$187	$2

7. Outreach - initial major emphasis of both DEP and KDHE are communication to effected members of the community the new requirements of Title III.

   a. Training courses are held for Local Emergency Planning Committees and emergency response personnel for emergency planning and hazardous materials identification and incident response.
   b. Presentations are made to trade shows, state fair, community groups, and trade organizations regarding Title III compliance.
   c. EPA, KDHE, and Kansas Chamber of Commerce Industry sponsored two series of all day seminars for Business and Industry Compliance.
   d. Kansas League of Women Voters contracted to sponsor a series of public meeting throughout the state for citizen participation.
   e. Public service announcements are prepared for TV and radio regarding right-to-know compliance.
   f. KDHE prepares a series of five pamphlets, Title III Compliance Documents, and additional section 302 and 311 compliance forms for use by the public and reporting communities.
   g. Division of Emergency Preparedness works with one urban county (Wyandotte) and one rural county (Washington) to develop model emergency response plans to be used by Local Emergency Planning Committees.
   h. Kansas Department of Human Resources - Division of Industrial Health and Safety assists with public information regarding new Occupational Safety and Health Act applications in Kansas.
   i. A newsletter for transmitting Title III news to all local emergency planning committees is published.

8. Data Processing - KDHE and DEP have proposed a combined information management system to process all Title III report submissions, provide for emergency response planning, emergency incident tracking and a chemical information data base.

   Earlier this month KDHE went to public bid for a pilot system which would provide capability on an IBM system 38 and 6 satellite IBM personal computers to handle the above information. Proposed is KDHE will maintain the central Title III facility and chemical information data base and the IBM P.C.'s are to process emergency planning and response information. DEP would provide oversight of planning and response activities.

9. Kansas Issues:

   a. The State Emergency Response Commission has worked towards securing federal funding to support state and local emergency planning committee activities.
   b. KDHE has corresponded with EPA regarding:

      1. Temporary exemption of ammonia nurse tanks in agricultural applications from 302 notification.
      2. Inclusion of fuels used on farms under the agricultural exemption of 311 and 312.
      3. Developing an EPA strategy to address oil drilling and exploration sites under sections 302, 311 and 312.

   c. Kansas Attorney General's advice: private members of the SERC and LEPC's are insulated against personal liability under Kansas' current law as state employees.
   d. Kansas has worked with EPA and their contractor, Eastern Research, to develop a risk communication manual for Section 313, Toxic Emissions Reports.
   e. Kansas has begun to identify a strategy for public information and interpretation of Section 313 emissions inventory reports, particularly their correlation to other public information under existing permit programs.

10. Statistics: Kansas accomplishments by the numbers in the first year: Sec. 302--2139, Sec. 311 list--257, Sec. 311 MSDS--233, Sec.312 Tier I--202, Sec. 312 Tier II--124, Sec. 313--NA, Total Sec. 311's--490, Total Sec. 312's--326.
    One hundred sixty-five training courses have been given since October, 1987 through DEP.

11. Miscellaneous - the Wyandotte County Local Emergency Planning Committee has prepared a set of by-laws for their activities. These by-laws have been transmitted to all Kansas Local Emergency Planning Committees for their consideration and use.

The City of Hopewell, Virginia

300 N. Main Street • Hopewell, Virginia • 23860 • Management Services

May 20, 1988

The City of Hopewell, Virginia
and
Community Right to Know Act
of 1986 (Title III)

Pioneering in the field of emergency management is not new for the City of Hopewell. The city has been on the cutting edge in many programs in the Commonwealth ranging from hazardous materials training to multi-jurisdictional hazardous materials exercises.

A new addition to this list has recently emerged - airborne chemical emergency preparedness.

On November 13, 1986, the City of Hopewell became the first jurisdiction in the state to exercise the Airborne Hazardous Substance Plan. With fourteen chemically based industries, all of which use or produce acutely toxic chemicals, Hopewell recognized the potential for disaster.

To test the plan, the Virginia Department of Emergency Services developed a scenario which included a simulated airborne release of anhydrous ammonia from one of the chemical plants in the city.

In what was considered a tabletop training exercise, city officials and industry representatives worked together to implement the plan and protect citizens of the city. On hand to observe and provide advice were numerous representatives from federal and state government.

Hopewell's Airborne Hazardous Substance Plan was initiated by the city's emergency services coordinator. Following the distribution of the Environmental Protection Agency's air toxic strategy in January 1986, the city met with industry to analyze extremely hazardous substances in the community. Through assistance from the state and cooperation from area industry, the city was able to develop a contingency plan for airborne hazardous substances. A joint effort by Hopewell and the Department of Emergency Services, provided a plan that has served as a prototype for other jurisdictions in the State.

A member of EPA's Emergency Response Unit, was one of the federal observers present during the exercise and he was pleased with what he saw. "The cooperation between local government and industry in Hopewell is remarkable," the EPA representative noted, "This willingness to work together is the key to good preparedness and response."

The state and federal agencies who participated in the exercise included: The Department of Emergency Services, State Air Pollution Control Board, State Water Control Board, Occupational Health, Environmental Protection Agency, U. S. Coast Guard and the National Oceanic and Atmospheric Administration.

This level of emergency planning for toxic airborne chemicals, was prompted by the 1984 disaster in Bhopal, India.

The City of Hopewell has a history of being known as the "Chemical Capital of the South" which was highlighted by the Kepone incident and pollution of the James River in the mid 1970's. After this unfortunate incident the city has changed its old image as a chemical polluter to a leader in chamical emergency preparedness planning.

In 1977 city officials and Industry met for the first time to discuss emergency management. As a result of this meeting the Hopewell Industrial Safety Council was formed which is now the Local Emergency Planning Committee (LEPC). This council has been meeting regularly since 1978.

When the Community Right-to-Know Act of 1986 (Title III) became law, the City of Hopewell and the Hopewell Industrial Safety Council (LEPC) had very little to do to be in compliance. Example of accomplishments prior to the Act:

- An emergency planning committee had been formed and meeting
- Plans were developed
- Plans were being exercised annually
- Material Safety Data Sheets (MSDS) were on hand at the local government level
- Extremely hazardous substances were identified
- Hazardous material training for first responders was being conducted to include joint training with fixed facility shift supervisors
- Transportation routes were identified (including pipeline)
- Facility coordinators were appointed by industry
- Emergency communications system was developed (Radio communications to city and state emergency operations centers)
- Public information programs were written to include the appointment of a Public Information Officer.

The Hopewell Industrial Safety Council (Local Emergency Planning Committee) is currently working on the following projects to promote The Community Right-to-Know Act:

* 8-10 minute video presentation on the Hopewell Community Awareness Program to be shown to churches, schools, civic groups and local cable viewers.

* Printing of 30,000 brochures on the Hopewell community awareness to be mailed directly to local residents.

* Annual training programs on hazardous material response between Hopewell Fire Department and local industry.

* Early warning system to alert community in the event of an extremely hazardous substance release from a fixed facility.

The video presentation, brochures and annual training programs are currently developed or are being developed and are funded by each major representative of the Council (LEPC).

The video presentation and brochures will cost $15,000.00 of which $1,500.00 will be paid by the City of Hopewell. Because of the high cost of purchasing and installing an early warning system, this project will be delayed until sufficient funds become available.

Statistics on Hopewell City

Population	:	24,100
Size	:	11.3 square miles
Industrial Property (Chemical Facilities)	:	2.5 square miles, all in the south-east section of the City.

Assessment of the Community Right-to-Know Act (Title III) on the Commonwealth of Virginia and local government.

The technical assistance and outreach given by the Environmental Protection Agency is considered excellent, however the lack of funding for bulk printing and distribution by EPA has placed this burden on the Commonwealth to provide duplication and mailing cost of technical information to local jurisdictions, LEPC's and facilities and manufacturers.

Funding for the Community Right-to-know Act of 1986 has been provided by the General Assembly of the Commonwealth of Virginia as follows:

1988-1989 $189,000

From this amount salary and insurance costs must be paid leaving an estimated $20,000 to administer the program.

1989-1990 $147,000

To the best of my knowledge the Commonwealth of Virginia has no Community Right-to-Know enabling legislation.

The Commonwealth of Virginia has 108 Emergency Planning Districts. Of the 108 districts, 88 have Local Emergency Planning Committees appointed and 20 not appointed to date.

The training and outreach from the Commonwealth and the Environmental Protection Agency to the local governments has been excellent.

6	Community Right-to-Know planning courses have been conducted.
6	Regional Public Official Conferences have been conducted.
4	Regional Workshops on Section 313 have been conducted.
5,000	Advisorys are mailed out to Virginia Manufacturers and local government prior to each critical date under the Community Right-to-Know Act by the Virginia Emergency Response Council.
2	Community Right-to-Know Act presentations are averaged weekly to local government officials throughout the Commonwealth by the Virginia Emergency Response Council.

The major problem at the local level with the Community Right-to-Know Act is as follows:

* The Federal Emergency Management Agency will not agree to a Local Emergency Coordinator to serve as chairperson of the Local Emergency Planning Committee if the local jurisdiction is funded under FEMA programs. It seems to me that the best plans and program manager available at the local level is the Local Emergency Coordinator. Most Local Emergency Coordinators that I know have completed Hazard Identification Capability

Assessment, and Multi-Year Development Plans required by FEMA.

- The Federal Emergency Management Agency will not agree to allowing the Virginia Department of Emergency Services to provide Federally Funded Planners to assist local emergency planning committees or local jurisdictions to develop plans as required by the Community Right-to-Know Act.

The local jurisdiction is caught up in a web among the requirements of the:

Environmental Protection Agency (EPA)
and the
Community Right-to-Know Act

Federal Emergency Management Agency (FEMA)
and funding, planning and direction

Occupational Safety and Health Administration (OSHA)
and the Hazardous Communications program
and Community Right-to-Know training for individuals
under the Act.

As a result of this it becomes very frustrating as an coordinator of emergency services, at the local level and a member of two (2) local emergency planning committees, (Hopewell City and Chesterfield County), to understand why federally funded planners who are available at the state level cannot assist local jurisdictions with such a critical emergency preparedness program.

My second concern is why no funds are available to help the small cities, towns and rural jurisdictions who have no resources available to even start a planning process.

I feel very fortunate to work for a city who funds emergency preparedness programs to include the Community Right-to-Know Act, but I must say we learned the hard way, a way I do not wish on any jurisdiction in the future.

Conclusion

The Community Right-to-Know Act of 1986 (Title III) is, in my estimation, a very important piece of legislation which can open many doors at the local level to build a solid relationship and emergency preparedness program between the local government, the transporter, handler and manufacturer of hazardous substances.

The City of Hopewell considers the tranporter, handler and manufacturer of hazardous substances a tax-paying citizen of the community, therefore, by meeting together for 12 years, we are committed to protecting lives, property and the environment both private and public.

Respectfully submitted,

Robert Brown

Robert Brown
Emergency Services Coordinator
City of Hopewell
300 North Main Street
Hopewell, Virginia 23860
(804) 541-2298

BB:amr

TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT on implementation of the Emergency Planning and Community Right-to-Know Act of 1986

May 26, 1988

Thank you, Senator Lautenberg and members of the Subcommittee. My name is Sandy Buchanan, and I am a member of Ohio's State Emergency Planning Commission. I am also the Director of the Toxic Action Project of the Ohio Public Interest Campaign, the state's largest citizen action organization with 350,000 members across Ohio.

I would like to outline for you the steps which Ohio has taken to implement Title III, and cite some of the reasons why the state has been able to make substantial progress in making Title III work for the citizens of Ohio. I would also like to comment on and make suggestions for ways in which federal agencies could better assist state and local efforts in this area.

I. Implementation of Title III at the State Level

A. Composition and Structure of SERC

In my opinion, the single most important thing which Ohio has done in implementing Title III has been to encourage broad-based participation by members of citizens groups, industry, fire fighters, local government, state agencies, and others. The state has emphasized fair and open processes at both the State Emergency Response Commission and Local Emergency Planning Committee levels, assuring that those who wish to participate in the process are able to do so. The extra work which it takes to keep a 32-member SERC and 87 local planning committees involved and informed has more than paid off in the hundreds of hours of volunteer time and the high quality of involvement of interested individuals across the state.

Governor Richard Celeste appointed 14 different state agencies to serve as members of the SERC, and appointed the Ohio Environmental Protection Agency to serve as chair. Ohio's SERC gives equal weight to industry and environmental advocates, with four of each serving on the commission. Local government and local emergency response personnel are heavily represented on the SERC, with one county commissioner, one mayor, one fire chief, one professional fire fighter, one representative of volunteer fire fighters, one disaster services director, and one local health department representative. Finally, two members of the state legislature, one from the House and one from the Senate, serve on the SERC.

Many of the local government representatives on the SERC have had expertise in implementing right-to-know laws at the local level in Ohio and have contributed that expertise to the work of the Commission. Although Ohio does not have its own statewide right-to-know law, we do have approximately one dozen local right-to-know laws in cities across the state, including Cincinnati, Cleveland, Akron, Canton, and a number of smaller communities. In fact, Toledo will vote on passage of a local right-to-know law this week. The explicit decision by Congress not to pre-empt state or local laws in Title III has been extremely important for local communities in Ohio.

In order to manage the many tasks involved in Title III, the SERC has divided itself into a number of committees, including an Executive Committee which contains fair representation of the different types of groups involved in the SERC. A Planning Committee, led by Ohio's Disaster Services Agency, has overseen appointment of the local committees and is guiding the development of the plans which are due in October of this year. A Training Committee, chaired by the State Fire Marshal, coordinated the application for FEMA training funds and has overseen the training sessions which are being conducted with those funds. A Right-to-Know Committee devised the forms used for reporting by industry and is setting up guidelines for public access to information. Finally, an ad-hoc Fees Committee designed a fee system which is now part of our pending Title III enabling legislation.

B. Information Management

Early on in the life of this new law, the state made a decision that it wanted the information it received under Title III to be manageable and accessible. For example, Ohio EPA wanted to receive lists of chemicals from industry under Section 311 as opposed to thousands of Material Safety Data Sheets. Experience with local right-to-know laws in Ohio had shown that lists were preferable to MSDS. The SERC issued a resolution encouraging companies to submit lists rather than MSDS, and most large industries found the creation of lists feasible. This has meant that Ohio has received 90% lists rather than MSDS, which provides a startling contrast to most other states.

In order to make the Title III data as accessible as possible, Ohio designed its own form for industries to submit. The form was designed with the help of the Right-to-Know Committee, Chemical Abstract Services, which is headquartered in Columbus, and the Franklin County Local Emergency Planning Committee. The form was designed for easy computer data entry (we rejected the use of optically-scanned forms because of the high error rate), and for easy use by industry. The form was set up so that 311 and 312 data for the same company can be reported on one form.

The state is now in the process of setting up a computer system for the 311 and 312 data. When the system is complete, the user will be able to retrieve data according to any of the fields which are used, such as facility name or location, type of chemical, SIC code, or longitude and latitude. The pending state enabling legislation, if enacted, will enable the state to purchase a computer terminal for each LEPC to hook into the computer system.

Ohio does not plan to establish its own computer system for Section 313 data, but is waiting for the federal computer system to be set up.

C. Industry Compliance and Enforcement

As of May 18, 1988, 3472 companies have sent 311/312 forms to the state and LEPCs (approximately 600 of these companies only submitted either 311 or 312 forms, but not both). An additional 1600 companies have informed the state that they are not subject to the reporting requirements at this time.

Ohio expected to receive approximately 8000 311/312 submittals from industries in SIC codes 20-39, so it appears that approximately 50% compliance has been achieved. In order to remind industries of their responsibility to submit this information, the state has done a series of mailings. The first mailing, to 8,000 companies, informed them of the law and sent them a copy of Ohio's report form. The second mailing, sent to companies who had not replied to the first mailing, reminded them of the law and stressed the need to comply. A third mailing, going out to about 800 companies and outlining the penalties for failure to submit the information, is currently being prepared. In addition, some LEPCs have done their own mailings to local industries urging them to comply with the new law.

If Ohio passes enabling legislation, the state government will be able to enforce the requirements of Title III itself. Until that time, we are dependent on U.S. EPA Region V for enforcement. The state has talked with Region V about enforcement stategies and has requested that when the state sends a referral that the Region hold an administrative hearing in the county where the violation took place. The Region seems amenable to doing this, according to Ohio EPA.

D. Funding

In the biennium budget covering the period from July 1, 1987 through June 30, 1989, the Ohio EPA received approximately

$600,000 in General Revenue Funds for Title III implementation. This funding has been used to hire Ohio EPA staff, to contract with the state Department of Administrative Services to design a computer system, and to fund the operations of the SERC.

As part of the process to produce state enabling legislation, the SERC examined various long-term funding mechanisms. After consideration of various alternatives, a fee system was ultimately proposed as part of the pending legislation. The fee system is designed to raise approximately three and a half million dollars per year. Of this money, approximately $1.8 million would go to the LEPCs, approximately $950,000 to the various state agencies involved, and approximately $600,000 to fire department training.

The fees would be paid by industries when they file their annual 311 forms with the state. Every industry would pay a basic filing fee of $75, with an additional $3 per chemical. No industry would pay more than $1500. Industries would be given a reduced fee of $150 if they file their data by computer disk or tape. Major industry lobbying groups in Ohio are supporting this proposed fee system.

E. Enabling Legislation

Although, for the most part, the implementation of Title III in Ohio has been a cooperative process between government, the public, and industry, the process of passing enabling legislation has been controversial. In 1987, the Ohio Attorney General's office drafted enabling legislation for the SERC's consideration. This bill enables Ohio to enforce Title III, protects Ohio's local right-to-know laws, allows Ohio to be more stringent than the federal law, enables Ohio to make trade secret determinations, and provides funding for the SERC and LEPCs. After several months of debate and discussion, this bill was approved by the SERC by a vote of 16-6 and introduced into the Ohio House of Representatives.

However, industry lobbyists, who wanted the state to pre-empt Ohio's right-to-know laws and wanted to tie Ohio's program strictly to Title III, drafted their own legislation and had it introduced in the Ohio Senate. In addition to pre-empting local laws and preventing Ohio law from becoming more stringent than Title III, the bill cuts down the size of the SERC, removing 11 state agencies, and changes the procedures for public access to Title III information to require that each industry be informed of the name of the person examining its files. The industry-backed bill contains the same funding structure as the SERC-backed bill.

The industry-backed bill passed the Republican-controlled Ohio Senate in March. This bill and the SERC legislation are both now awaiting consideration in the Democrat-controlled Ohio House, and will be the subject of committee hearings this summer.

F. Relationship between SERC and LEPCs

In June 1987, the SERC decided that LEPCs would be formed at the county level in Ohio, although counties would have the opportunity to form joint districts if they wished. Only two counties, Montgomery and Green, formed a joint district, so that Ohio has a total of 87 LEPCs. Today, 84 of the 87 LEPCs appear to be functional. An effort was made by the SERC and its members to enforce the requirements for broad-based participation on the LEPCs. For example, one of the other environmental advocacy representatives and I examined the list of members of each LEPC and made recommendations for where community and environmental representation needed to be strengthened. Other interest groups represented on the SERC also encouraged people in their networks to join LEPCs. A number of SERC members are also LEPC members, which helps to provide "reality checks" for the SERC. SERC members are prohibited from voting on appointments to or funding of their own LEPCs.

In the spring of 1987, the SERC held 8 regional meetings to introduce Title III around the state and to encourage people to join LEPCs. In the fall of 1987, 11 regional meetings were held and in March 1988 the SERC hosted a training session for LEPC members. In addition, several informational meetings have been sponsored by private organizations for their members. The Ohio Association of Professional Fire Fighters, the State Fire Marshal, and the Ohio Public Interest Campaign held a training session for fire service personnel and citizens groups in June 1987. The Ohio Manufacturers Association held several seminars on Title III for their members around the state.

The SERC has sent a steady stream of information to LEPCs, with mailings going out from the state approximately every two weeks. The state has taken federal information, such as the U.S. EPA technical guidance documents and made copies for each LEPC, and has worked to translate information it receives into understandable form.

The state has also worked to oversee the local emergency planning process. The SERC decided to ask each LEPC to submit an interim status report on the planning process by April 1, 1988. Approximately 53 LEPCs have filed these reports, and several additional LEPCs, including some of the larger counties, are certainly actively involved in the planning process although they have not filed the reports. A copy of the interim status report is attached.

Because some LEPCs are clearly not yet comfortable or up to speed with the planning process, the SERC is currently considering with the planning process, the SERC is currently considering setting up in-depth training sessions on planning for LEPCs and/or hiring staff who can go and spend time with individual LEPCs to help them set up the planning process.

Several of Ohio's LEPCs have developed their own tools for use in the planning process. For example, both the Franklin County (Columbus) LEPC and the Cuyahoga County (Cleveland) LEPC have developed questionnaires for local industries, using the authority available to LEPCs under section 303(d)(3) of Title III. Cuyahoga County has developed a system for vulnerability zone analysis. Many counties are constructing plume maps, showing which areas of the communities would be likely to be in the path of toxic chemical clouds in the event of accidents at various facilities.

F. Effects of Title III on Emergency Planning and Response Capabilities in Ohio

Title III is beginning to have a number of positive effects on emergency planning and response capabilities in Ohio. One positive effect has been at the simple but critical level of communications. Now that every county has identified an emergency response coordinator, Ohio EPA knows whom to call when an accident occurs in that county. In addition, both the LEPCs and the state now have contact phone numbers for industry facility coordinators at hundreds of facilities across the state, which can save a great deal of valuable time when accidents occur at night or on weekends.

Ohio EPA estimates that, prior to the passage of Title III, only 20 counties in the state had real disaster plans. Now, every county in Ohio is being required to develop a detailed emergency plan under Title III, and the majority of counties seem to be making a sincere effort to do so.

State officials are somewhat disappointed that the Title III process in Ohio has not led more counties to join together in forming LEPCs. But, although inter-county cooperation has not been enhanced, intra-county cooperation appears to be improving. As various local governments and fire departments within counties join together in the planning process, the advantages of shared equipment or jointly-owned hazmat vans are looming larger. One example of the type of cooperative venture which can be launched is occurring in Franklin County, not as a result of Title III but as a result of a local ordinance requiring carriers of hazardous materials to use the outerbelt. Seven suburban communities which contain parts of the outerbelt have each bought one piece of hazmat equipment, and they will work together in the event of an emergency.

The Title III process has also provided a framework for local communities to examine problems with their emergency planning processes. For example, in February of this year a Sun Oil Pipe Line in Sandusky County, Ohio, ruptured, spilling 300,000 gallons of toluene into the Tiffin River. A number of problems ensued in the emergency response, partly due to a lack of coordination between the major city and the surrounding areas. The Title III process is encouraging Sandusky County to rethink and reorganize its emergency response planning.

The training which has been and will be provided for fire fighters and other emergency personnel as a result of Title III will have long-term beneficial effects on emergency response in Ohio. Thus far, 650 first responders have been trained in Ohio with the FEMA training grant funds; the Ohio Fire Marshal plans to train 2400 additional first responders in the coming year.

II. Recommendations for Federal Agencies

A. Technical Assistance and Training

Almost all of what Ohio has accomplished in implementing Title III has been the result of state and local initiative. U.S. EPA has offered very little technical assistance or training to state government, and appears to have placed little priority on Title III in its own regional offices. Region V assigned two people to Title III in December 1987, more than a year after the law had gone into effect.

The delay in the production of educational tools and technical assistance documents from U.S. EPA has been frustrating for members of the SERC, LEPCs, and interested citizens. For example, an IBM-compatible computer program for emergency response planning promised by U.S. EPA many months ago still is not available, even though the deadline for the submission of local plans is only four months away. Although industries must submit their Section 313 data by July 1, 1988, U.S. EPA is now saying that the computer system for data entry may not be available until June of 1989.

In the cases when it does provide advance copies of rule-making or information to the states, U.S. EPA does not seem to be providing even-handed assistance to all states. While Ohio seems to be among 12 or 14 states who are receiving this type of information from U.S. EPA, many other states are apparently being left behind.

Of course, one key to solving the problems with lack of technical assistance and lack of resource materials is for Congress to provide funding both to U.S. EPA and the states for implementation of Title III. Title III is the most innovative environmental program ever devised in the United States. Congress should fund it at a level which allows it to reach its potential and gives both the federal and state governments a fighting chance to implement it well. Funding which is provided to states should also be channeled to LEPCs, who are the heart of Title III.

Ohio would also like to see a change in FEMA policy to provide more support for Title III. First, FEMA does not allow the grant money which many local disaster services agencies already receive to be used for Title III activities. In Ohio, the 55 local disaster service directors are deeply involved in Title III implementation. A change in policy to allow them to use FEMA grant money for Title III would be very helpful.

The state government has received contradictory instructions from FEMA regarding the use of its Title III grant money. Because the original grant instructions said that the money had to be used for existing programs, Ohio returned $22,000 in unused grant money to FEMA at the end of the first grant year. When Ohio returned the money, FEMA asked why the state had not used the money to do its Title III training sessions. The state would have been happy to use the money for these training sessions if the original guidance from FEMA had not prohibited new uses of the money.

FEMA and U.S. EPA have sponsored several teleconferences on Title III. These could be improved and made more accessible to people who need to receive the information in several ways. First, the broadcast systems which have been used need to be changed so that more places are able to receive the transmissions. Only a few places in Ohio have had the necessary equipment to be able to receive the teleconferences. Second, the teleconferences have generally been too long for the many volunteers involved in Title III to be able to take the time to view them. Viewing the teleconferences generally takes an entire day, which many people cannot afford to spare.

Documents produced in Washington could also benefit by being reworked to be more "user-friendly." The publications need more graphics and workbook-type formats so that they are easily used by volunteers and local committees. State officials found the CEPP workbook done by U.S. EPA to be more useful than the Title III documents which have been produced.

B. Outreach Activities

U.S. EPA's outreach activities on Title III have been very limited. The agency's major effort appears to have been the series of six workshops held last fall. Those workshops were clearly geared toward industry representatives and focussed mainly on how to achieve compliance with the laws. The registration fees and choice of hotels and locations were too expensive for members of citizens groups and other volunteers involved in Title III. After being lobbied by environmental groups in Washington, U.S. EPA finally offered 10 registration scholarships to each session, but did not pay for travel or accommodations. I was only able to attend because Ohio budgeted money for members of the SERC Executive Committee to attend the conference. Since most other states have either no or few environmental representatives, or have not received appropriations for SERC, this option was not available to citizens from most other states.

If there had been no way for EPA to offer more scholarships, or if EPA had had trouble making ends meet at the conferences, members of citizens groups might be able to understand their exclusion from these events. But apparently EPA made a considerable profit from these conferences, and is now looking to spend the money for other activities.

More than six months ago, I attended a meeting with members of U.S. EPA's Title III Outreach Committee who were looking for suggestions on how to work with the environmental community and citizens groups. It appeared at that time that U.S. EPA was planning to produce a citizens guidebook on Title III. To my knowledge, this document has not yet been produced. In fact, other than the original 8-page fact sheet on Title III, we have not seen any educational documents for the public from U.S. EPA. Such documents, along with public service announcements and easy-to-read brochures, would be extremely helpful in educating the general public about the law.

NOTE: Attachments to this statement have been retained in committee files.

STATEMENT OF
J. WINSTON PORTER
ASSISTANT ADMINISTRATOR FOR
SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT
OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

MAY 26, 1988

Mr. Chairman and members of the subcommittee, I am J. Winston Porter, Assistant Administrator for the Office of Solid Waste and Emergency Response. With me today are Victor Kimm, Deputy Assistant Administrator for the Office of Pesticides and Toxic Substances, and Frederick F. Stiehl, Associate Enforcement Counsel for the Office of Enforcement and Compliance Monitoring. I appreciate this opportunity to discuss the implementation of the Emergency Planning and Community Right to Know Act of 1986 (Title III).

I. OVERVIEW

It is a year and one-half since Title III was enacted. That particular action introduced into our nation a new relationship among government at all levels, federal, State and local, industry and the private sector, environmental and other public interest organizations, and the general public regarding information related to chemical safety. All of these parties have roles in program implementation.

The federal role is to provide national leadership, guidance, technical assistance and training through the States and to develop regulations and appropriate enforcement mechanisms. States, through State Emergency Response Commissions, provide program leadership to ensure the development of an emergency planning structure and implementation of State and local Title III responsibilities and to provide training and technical assistance to communities. The local government role is to take the lead in carrying out emergency planning, community right to know and response functions. It is the responsibility of industry officials to ensure compliance with Title III reporting requirements and to actively participate with the SERCs and LEPCs, to ensure the effectiveness of this program, especially at the local level. Finally, the public role involves gaining increased awareness and understanding of chemical risks and supporting actions to increase public safety and protection of the environment.

This is not a typical Federal regulatory program. For example, EPA does not receive the majority of the required reports and Congress recognized that fundamental responsibility for implementation already rested with State and local governments. While Title III has programs that deal with both the routine and the accidental releases, they have very consistent and common threads. For example, each requires the receipt and analysis of substantial amounts of information at the State or local level regarding chemical risk to the community. The data, when properly assimilated may prompt significant State or local action using State or local authorities or even direct and persuasive dialogue with local industry. Each program requires communication of risk in a rational and understandable manner to the local citizens. Each requires a relationship with the private sector producer or user of chemicals in a cooperative manner. Also, each can be benefited by an informed and knowledgeable citizenry at the local level.

Today, I would like to provide you with a status of Title III implementation activities at all levels, outline our enforcement strategy and discuss future plans. In the past nineteen months, we have met ten statutory deadlines, published seven substantive rulemakings, under Sections 302, 304, 311, 312 and 313, provided an interim report to Congress on the Review of Emergency Systems, (or Byrd Study), presented with FEMA a plan to Congress for administering Section 305(a) State training grants, and initiated an extensive outreach program. Let me begin with a detailed report on emergency planning and training.

II. EMERGENCY PLANNING AND TRAINING

In the law, the Governor of each State is required to appoint a State Emergency Response Commission (SERC) which is intended to be broad based. I am pleased to report that every state has designated a SERC.

These commissions under Section 302 requirements received notifications from facilities where any of 366 extremely hazardous substances were present in excess of threshold planning quantities established by the EPA. The commissions also defined local emergency planning districts. Thirty-four States used county (or county/municipality) designations, 10 used regional boundaries and six States designated only one district statewide. The commissions were further required to appoint, supervise and coordinate local emergency planning committees (LEPC) for these districts. The law was very specific about the membership of these LEPCs, involving most segments of the population---fire, police, civil defense, state and local officials, media, environmental groups. To date, all States have established local emergency planning districts. However, the number of districts per State and the functioning level of the committees varies greatly.

The end result of this effort is a comprehensive emergency plan which is due to be developed by these local emergency planning committees by October 17th of this year. EPA shares with others a concern over the quality of these plans in light of the short time allowed for development. Compliance rates for the emergency planning notification by industry is believed to be less than 50 percent of what States expected. This is due in large part to lack of awareness on the part of small businesses and others regarding their role in the planning process. On the other hand, planning guidance was published by the National Response Team for use by LEPCs within five months of enactment of the law and an additional technical guide explaining hazard analysis for extremely hazardous substances was published in January by EPA, FEMA, and DOT. Work is currently underway on an expansion of this guide to address hazard analysis for all hazardous materials (e.g., explosives, flammables,etc.). This expanded guide will be published by the full National Response Team and should be available this fall.

Concerning extensions of the statutory planning deadline under Section 303, EPA is encouraging State commissions and local planning committees to consider the October deadline the first round of the planning process. The goal for this October should be to develop the best possible plans given the short time frame and other constraints. Title III makes clear that the planning process is iterative and continuous, with updates, revisions and testing each year. EPA will work with other Federal agencies to assist SERCs and LEPCs to improve the process and plans during each planning cycle.

We have already learned of several areas which got an early start and are near or at completion now. One of the forerunners is the community of Hopewell, Virginia.

From the outset of the voluntary Chemical Emergency Preparedness Program (CEPP), which preceded Title III, the accident preparedness, prevention, response and mitigation program in the Environmental Protection Agency (EPA) has focused on local planning and local action as its core. Historically, in the area of routine releases of toxic chemicals into one or another of the waste streams, the focus has been national legislation and regulation with full recognition that one of the weaknesses in implementation was the lack of direct local community involvement. As a general rule, there is no carefully constructed, durable, and effective network of institutions at the local level and the program has traditionally been implemented by State organizations.

Title III recognized these structural issues and required the creation of institutions at the local level to specifically deal with the full range of toxics problems -- accidental and routine-identified under the emergency response and right-to-know programs. In the long term, these new organizations -- State commissions and local planning committees -- can provide a structure for coordinating State and community actions for prevention, preparedness, and response to both accidental and routine chemical releases.

Each SERC is also required to notify EPA of the facilities that are subject to the planning requirements of Title III. EPA Regional Offices have received these notifications from States. EPA will use this information to work with States to identify priority areas and compliance patterns.

While EPA is not directly responsible for administering the Title III training grants under Section 305(a), we have been actively working with FEMA to ensure effective use of these grant monies. FEMA and EPA developed a plan for distributing the grants which was submitted to Congress in June of 1987. We serve on the Interagency Technical Review Panel, along with OSHA, ATSDR and FEMA, which provided recommendations to FEMA for distributing the grants in 1987 and 1988. The State Commissions are responsible for submitting States' proposals for the grants.

III. COMMUNITY RIGHT TO KNOW REPORTING

The Community Right-to-Know provision of the law builds on the OSHA Hazard Communication Standard--the worker right to know program. There are two reports which facilities covered by this standard must provide to State commissions, local planning committees and fire departments.

Material Safety Data Sheets (MSDS) or a list of MSDS chemicals were required to be submitted beginning October 17, 1987. Additionally, an annual inventory report was due on these same chemicals beginning March 1 of this year. Again, compliance levels are believed by States to be less than 50% of what is expected. OSHA's expansion of the worker right-to-know program will significantly impact reporting under Title III later this year.

Of primary concern is the information management problems for the receiving entities. Currently about 350,000 facilities are subject to the OSHA standard. After the Occupational Safety and Health Administration (OSHA) expansion of coverage, there is potential for reporting by 4.5. million facilities on some 500,000 products. EPA established thresholds of 10,000 pounds for the first two years of reporting, except for the list of extremely hazardous substances, which has a lower threshold. We are currently studying the appropriate level for a permanent third-year threshold. Our goal in setting thresholds is to strike a balance between information needed to protect public safety and information overload which could mask community hazards. However, public access to information below the thresholds will be preserved.

Perhaps this is the time to discuss EPA assistance to SERCs and LEPCs regarding information management activities associated with Title III. EPA has scheduled five information management workshops for SERCs and LEPCs this summer. The primary purpose of these workshops is to provide a forum for the sharing of information on systems developed and used by these various constituencies for handling of data. Some states have designated a particular location to design an information system for state-wide use. The Seattle fire department has been instrumental in the Department of Commerce National Oceanic and Atmospheric Administration's (NOAA) development of the CAMEO system which is an information management system that can also be helpful in planning for and responding to a chemical accident. While this system is in the public domain, there are a great many other systems available in the private sector to manage the kind of data used in Title III implementation. We're trying to foster the exchange of States' and communities' experiences in this area.

Concerns have also been raised regarding the use of MSDS since there are numerous MSDS for the same chemical, the format is not standardized and there is doubt that the technical information can be easily understood by the LEPCs and the public.

EPA is consulting with OSHA, Chemical Manufacturers Association, and the American Society of Testing Materials on these issues.

IV. TOXIC CHEMICAL RELEASE INVENTORY

Regarding the Toxics Release Inventory, or TRI data required under section 313 Title III, I believe we have made some major achievements given our short deadlines. As you know, the TRI regulations list over 300 chemicals and 20 chemical categories which are subject to the annual reporting requirements. The TRI is a unique environmental data base because it collects data on emissions to the air, water, and land and will provide the Agency, state and local governments, industry and the public unique opportunities in the use of the data. EPA's efforts to implement TRI have focussed primarily on the following objectives:

1. design a data collection form which accurately incorporates the breadth of information which Congress mandated be collected;
2. carry out an outreach program to contact as many manufacturers as possible who are subject to the reporting requirement;
3. provide technical guidance to industry regarding how to develop accurate answers to the questions on the report form;
4. design an efficient computer-based data system to house the data and to catch obvious errors in the submitted data;

5. provide the data to the public both electronically and by other means in a manner which promotes easy access and use;
6. work with our state and local colleagues to help them prepare for answering questions from the public regarding the data; and
7. determine how EPA itself can make the best use of the data in its own programs.

Let me elaborate on how we have worked to achieve these objectives. EPA's reporting form and proposed rule, which were carefully crafted to follow the Congressional blueprint for the content of the data base, were published by the June 1, 1987 deadline. The final rule, form and instructions were published on February 16, 1988, meeting the goal of providing final requirements and other guidance in time for the regulated community to effectively comply by the July 1, 1988 deadline.

EPA has also taken a number of steps to notify companies of their reporting obligations and to provide technical assistance to facilitate accurate reporting. The Agency developed an information brochure and mailed it to over 300,000 potentially covered facilities. We developed and are distributing a videotape to assist in reaching smaller facilities that may need to report. We developed a detailed training program for regional personnel and the regulated community on the 313 reporting rule's provisions and techniques for release estimation. The Agency is also providing technical support through an information hotline service that is answering over 300 section 313 calls per day. We have also developed a detailed technical guidance document for estimating releases and waste treatment efficiencies. We have developed 11 industry specific guidance documents for industries such as electroplating operations, textile dying, etc., and 6 more will soon be available.

The Agency has also taken steps to assure that the data received from the reports are effectively entered into the data base and that a proper management system for the data is in place. The start-up of the data processing center is on schedule and has begun limited data entry activities. Design and programming for the data base has been completed and is being tested. Because we are concerned about the quality of the data which will be reported, we are incorporating automatic "edit checks" into the computer program to detect obvious omissions and errors. This will allow notices of non-compliance to be generated by the computer for major errors and sent to the submitting company for correction.

The Agency has taken a number of steps to provide public access to the TRI database. In early March 1988, EPA issued and distributed a report regarding options to make TRI Data Base accessible to the public. A public meeting was held on March 30, 1988 to present the options analysis and EPA's recommended approach for making TRI data publicly available on a database. We decided to proceed with an Interagency Agreement with the National Library of Medicine and to encourage private vendors to put the data on thin systems as well. We believe this is the best option based primarily on two salient features: cost to the user of the NLM system (estimated at $18.00 to $25.00/hr.); and access to NLM's multiple complementary toxicological and other health and safety data files. We expect to sign the EPA/NLM interagency agreement shortly. Subsequently, we expect the TRI public database will be available in Spring 1989, following the procurement of the computer equipment and the requisite programming by NLM. As required by Title III, EPA will also use "other means" of distributing the data. Among the options being evaluated are computer generated microfiche, and CD - ROM (compact disks which can be searched by computer).

The release of the TRI data will undoubtedly stimulate many questions from the public, ranging from "What do these releases mean for my health and the health of my community?" to "What type of controls have been imposed on these releases and can more be done?" Environmental and health officials at all levels of government will be the recipients of these questions which, in one sense are really no different from questions we all receive today, but which are likely to require more detailed and specific answers. Within available resources we are working to provide state and local officials with support for their inevitable role in answering these questions, building on their traditional role of answering this type of question from the public. We recognize, however, that this type of question from the public adds a new burden on their personnel which they have not anticipated. We therefore need to be modest in our expectations of their ability to respond. For their use in the immediate future, we are preparing: a one-page citizens' brochure that answers questions such as what is the Toxic Release Inventory, and how additional information may be obtained; a question and answer document to be given to Regions, State and local officials for use in assisting them in answering questions which they may receive from the general public; and chemical fact sheets (developed by the state of New Jersey) covering the basic health hazards of the chemicals listed in section 313 of Title III of SARA. By July of 1988, 170 of the 300 New Jersey fact sheets will be completed and available for distribution. The remaining fact sheets will be completed by early 1989.

Use of the data within the Agency, across the various media programs, is also a high priority for EPA. We have an active TRI Task Force composed of Agency managers which is focusing on the use of the data by EPA. Among the uses being studied are the prioritizing of regulatory and enforcement activities in all of our media programs.

In summary, we have worked hard to make the Toxic Release Inventory an effective new source of information for the public and for environmental professionals in EPA and in State and local agencies. We have developed an efficient form to collect the data, attempted to notify as many manufacturers as possible about the requirements of the law and how to provide accurate data, and set up the internal structure to receive and computerize the data. We are making a special effort to try to understand the needs of potential users and to provide "user-friendly" access to the data. We now await the arrival of the data and the beginning of this new program which we are sure will prove to be an important one for both the public and for EPA.

V. OUTREACH ACTIVITIES

"Getting the word out" is one of the most difficult problems we faced over the last year and a half. To meet the somewhat unprecedented outreach requirements of Title III, the Agency is working to help prepare states and localities to respond to inquiries about the law and the data, educate the public about the requirements and opportunities under Title III, help prepare them to access and understand the data being reported, and work with industry to ensure compliance.

An Agency-wide Outreach Subcommittee, including a designated Title III Outreach Coordinator from each region, represents offices involved in implementing and communicating the Title III program. It was designed primarily to ensure coordination and consistency, support the regions in their outreach efforts, share information and maximize the benefits for public information/ education. It's important to note that, while the Outreach Subcommittee was formed to assure coordination and consistency, outreach is an integral part of the overall implementation plan for this program. Those involved in managing and implementing this program are sensitive to the need for effective communication and interaction with all parties involved in Title III, especially the public.

Together, HQ and regional communications coordinators, working closely with program managers are: targeting audiences; tailoring specific messages to those audiences; responding to requests for speakers; identifying opportunities for senior managers to incorporate Title III into presentations and helping them prepare for those presentations; establishing ongoing communications contact with the SERCs; establishing and maintaining a dialogue with interested and involved external groups; identifying needed public information materials; setting priorities for developing those materials; ensuring that materials being provided to the public are consistent, clear, accurate and timely. Regional and HQ Outreach Coordinators work closely with program managers to provide support and counsel as they develop their implementation plans and in most instances, provide a regular forum for information-sharing and problem identification.

VI. ENFORCEMENT

Having established these outreach efforts to inform the regulated community, we are now turning our attention to enforcement. Title III authorizes the Federal government, state and local governments, and citizens to bring legal action against owners or operators of facilities for their failure to comply with Title III. Title III gives States, local governments, and citizens the right to information on hazardous chemicals used in their areas and the tools to access that information should an owner or operator fail to meet the statutory reporting obligations. State and local involvement in enforcement of Title III is essential to its successful implementation.

In trying to meet the challenge of enforcing Title III at the Federal level, two distinct approaches are being taken. First, under Section 313, the Agency is receiving data submissions directly from facilities that are required to report. Using submitted reports, the data will be screened for errors, i.e., missing information. Computer generated Notices of Noncompliance will be issued to those with major errors based on these data screens. The Agency plans to identify non-reporters by identifying companies likely to be subject to section 313, comparing the information against the list of those who reported, and conducting inspections at facilities which failed to report to verify that they are subject. EPA plans to identify and penalize non-reporters.

A second approach is being used for enforcement of the reporting requirements under Sections 302, 303, 304, 311, and 312. Since these reports are sent directly to States, LEPCs, and fire departments, EPA will be depending on States to carry much of the routine enforcement load. The Agency will concentrate its resources on enforcement follow-up to violations of the accidental release notification requirements of CERCLA Section 103 and SARA 304. Section 304 of Title III emergency release notification builds on the release reporting to the National Response Center which is required under CERCLA. Facilities that spill any of approximately 700 CERCLA hazardous substances or any of the Title III extremely hazardous substances must notify SERCs and LEPCs and provide a written follow-up report under Section 304. It is difficult to estimate compliance rates under this section because many states and localities had emergency notification requirements in place prior to passage of Title III. Title III cases are currently being developed in Regions IV and V in response to requests from States and local committees.

EPA will combine CERCLA Section 103 and SARA Section 304 enforcement whenever possible and, in developing these cases, EPA will routinely coordinate with the appropriate SERC to incorporate other violations of Title III into the case. Additionally, EPA will take enforcement action on specific cases referred by the SERCs for violations of Sections 302, 303, 311, and 312. However, EPA believes that states and locals have the primary responsibility for enforcement of these Sections. SERCs and LEPCs have the statutory authority to enforce Sections 302, 303, 311, and 312 through civil actions.

We believe that the enforcement program currently under development by the Agency will be sufficient to address the demand. Current demand from SERCs for EPA enforcement has been limited to a few isolated cases. We do not anticipate a large number of requests to intervene on behalf of the States. In fact, EPA expects that many more States will incorporate the

Federal reporting requirements into State law and take ownership of the program and its enforcement.

VII. FUNDING AND RESOURCES

The State commissions, local planning committees and fire departments continue to assert the need for Federal funding of Title III activities. Nonetheless, many have managed to generate resources. In a recent poll conducted nationally by the State of Kansas, of the nineteen respondent states, thirteen had approved significant state funding for current and/or future Title III operations. In addition, four states have implemented fee structures under the law, and eight other states have pending legislation for such systems.

Several States appropriated money for Title III in 1987. North Carolina and Kansas led the country in Title III spending, each appropriating approximately half a million dollars. This year and next, Kansas is spending general revenues for Title III, but that will soon change. Since January of this year, reporting facilities have been paying a fee with each filing ranging from $12 to $46.

VIII. FUTURE DIRECTIONS

While preparing to respond to chemical accidents is important, preventing them in the first place is even more crucial. It is therefore important that we place more emphasis on prevention activities. The Section 305(b) review of emergency systems, which should be submitted to the Congress shortly, not only identified areas where improvements in technology are needed, but also highlighted the need for management commitment and support, and information sharing, aimed at actual prevention of chemical accidents. We plan to continue the dialogue established with industry, trade and professional organizations, states, and environmental groups regarding needs in the areas of hazard evaluation, prevention, detection, and monitoring technologies, and public alert devices via the continuation of technical panels formed as part of the study. We will work closely with all of these groups to fill gaps in research and development and information in these areas. To this end, we will continue to gather and exchange information on the causes of accidents and approaches to prevent them, sharing it domestically and internationally and emphasizing distribution to small companies, users and distributors, SERCs and LEPCs.

As we work to strengthen the capabilities of the SERCs and LEPCs, we will include guidance and technical assistance in the areas mentioned above in an effort to enhance an understanding of the hazards of chemicals and chemical processes and thus promote a dialogue with industry that will result in local actions to decrease the risk of chemical accidents. We will also place a renewed emphasis on the conduct of chemical process safety audits and conduct an effort to strengthen agency and state capability in these areas.

We expect to complete the major rule-making activity next month with the final rule on trade secret provisions. In addition, EPA, in collaboration with other Federal agencies, will continue to emphasize our support to SERCs and LEPCs by providing guidance, technical assistance and training through our Regional offices. The effectiveness of this structure is essential to the success of the Title III program. Planned support includes additional guidance materials and updates/revisions of existing documents; technical assistance in plan development, hazards analysis, exercising plans, information management, risk communication, compliance and enforcement, outreach, and accident prevention; expansion of existing training courses and development of new training courses and materials. We will continue to support national and regional conferences and workshops to share information on program successes and problems and work with the National Governor's Association to share information among States and consult with states on program implementation. For example, NGA and EPA are sponsoring a national SERC/LEPC conference on June 8 through June 10.

IX. CONCLUSION

In conclusion, I would like to indicate that we view Title III as the beginning rather than the end of a national chemical safety program. It is an extraordinary legislative opportunity, but also carries some important burdens for individuals, governments, and industries. As a result of the new information flow, data will have to be developed, provided, received, assimilated, managed, disclosed, explained, understood, stored, interpreted, used and acted upon by many people, some of whom have no familiarity with that kind of data, and by many people and organizations who didn't have or don't have much time to prepare to deal with these issues.

The Pampa, Texas Fire Department shares our view that the legislation provides an opportunity rather than a burden. In a recent letter to the International Association of Fire Chiefs, they explained how they are implementing Title III by building on an existing program in which every business in the city is inspected annually for fire hazards. During the course of inspections, a hazardous materials response team member surveys the business to determine reportable chemicals, informs the owner or operator about Title III and assists them with reporting procedures, this not only helps in planning for possible hazardous materials incidents, but also enhances the public relations of the fire department. Many other fire departments across the country are similarly taking enlightened approaches to the Title III program to increase public safety and environmental protection.

The result we all hope for from all of this isn't a single product or written plan at all, but a process, one of an informed community grappling with the management of the presence of chemicals. If we succeed, we should save some lives.

Mr. Chairman, that concludes my testimony for today. Thank you for the opportunity to testify on this very important program. If you have any questions, I would be happy to answer them.

MANUFACTURING
CREATES
AMERICA'S
STRENGTH

COMMENTS
ON BEHALF OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS

ON THE
IMPLEMENTATION OF THE EMERGENCY PLANNING AND
COMMUNITY RIGHT-TO-KNOW ACT OF 1986 (TITLE III)

SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT

MAY 26, 1988 HEARING

U.S. SENATE

SUBMITTED FOR THE DOCKET
JUNE 22, 1988

NAM

National Association of Manufacturers
1331 Pennsylvania Avenue, NW, Suite 1500 — North Lobby
Washington, DC 20004-1703 (202) 637-3000

The National Association of Manufacturers is a voluntary business association of more than 13,500 corporations, large and small, located in every state. Members range in size from the very large to the more than 9,000 smaller manufacturing firms, each with fewer than 500 employees. NAM member companies employ 85 percent of all workers in manufacturing and produce more than 80 percent of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Associations Council and the National Industrial Council.

EXECUTIVE SUMMARY

The National Association of Manufacturers appreciates this opportunity to comment on the implementation of SARA Title III. The NAM has reviewed the opinion expressed by the panelists. While the opinions expressed by all were valid, the NAM regrets that little was made to identify the problems of Title III as encountered by small and medium size companies. The great mass of impacted companies will indeed be small and frequently these companies have little or no experience with environmental regulations or forms such as Form R.

The NAM believes Title III will be a more workable program if the following changes are made:

1) Improve EPA education/outreach activities for small and medium size companies
2) Flexibility to EPA for lenient enforcement action against small companies showing good faith compliance efforts on emissions reporting given the outreach problems, inadequate hotlines and lack of technical guidance documents
3) Reprinting and adequate distribution of guidance documents for Title III
4) EPA workshops and seminars
5) Expand EPA hotline capabilities
6) Make Title III lists of chemicals easier to understand with various requirements
7) Better coordination within various offices between EPA, Local Emergency Planning Committees (LEPC) and State Emergency Response Committees (SERC)
8) Address liability issue for LEPCs and SERCs
9) Improve data management capabilities
10) Improve training at all levels of SARA Title III

It is the intent of these comments to identify problem areas for improved implementation of Title III in the future. These comments are offered in the hope of establishing an ongoing communication with Congress and the EPA over the problems under SARA Title III.

COMMENTS
ON BEHALF OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS

ON THE
IMPLEMENTATION OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986

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The NAM believes that Title III of the Superfund Amendment and Reauthorization Act of 1986 (SARA) will come to be a workable program. However, there are many formidable obstacles to correct before SARA Title III will be a truly effective program. The public expects to have access to chemical use information. It is only regrettable that these disclosure and reporting activities coupled with the emergency planning activities seem to do little to address "the public's right to understand" the beneficial and safe uses of chemicals in the manufacturing process. The NAM believes the failure of Title III is really due to the statute's unrealistic deadlines and a lack of funding for EPA programs.

To this end, the NAM fully supports the use of the Community Awareness and Emergency Response (CAER) Program established by the Chemical Manufacturers Association. Additionally, the NAM will continue to work with the EPA to disseminate SARA compliance and guidance documents to its member companies. To complement the CAER and EPA materials, the NAM published "Preparing for Emergency Planning," a guidance manual designed for the plant manager of small and medium size companies.

It is difficult to estimate the level of compliance under the July 1, 1988 or October 17, 1988 emergency plan deadline at this point. More EPA action is needed in the area of outreach and education for the July 1, 1988 deadline. The NAM believes there are thousands of companies which are covered by the July 1 emissions reporting requirement which have no knowledge of this program. These comments will offer suggestions to resolve these problems.

The NAM's Solid and Hazardous Waste Task Force held a Title III "Oversight" discussion on April 21, 1988. The major problem areas discussed were:

- Information overload
- Confusion over the lists/too many lists
- Information management problems
- Lack of training
- Liability concerns for the LEPCs and SERCs
- Lack of coordination within EPA's Office of Solid Waste and Emergency Response (OSWER), Office of Pesticides and Toxic Substances (OPTS), and the "outreach" offices such as External Affairs and Office of Small Business Ombudsman
- Unrealistic deadlines (established by Congress and imposed on EPA)
- Material Safety Data Sheets (MSDS) forms shouldn't be submitted to all fire stations, SERCs and LEPCs unless entities can manage the information
- Better coordination between EPA, SERCs and LEPCs
- Confusion by many smaller companies who use trade name or common name instead of proper chemical name on form
- Make delisting process easier if EPA makes "clear finding" of no adverse impacts
- Nonstandardized MSDS are problematic for fire department, etc.
- Need for EPA to identify its enforcement policy

Special concerns for companies with 20-500 employees:

The NAM has received several hundred phone calls from small companies who have no clear understanding of their potential role under Title III of SARA. These companies have bitterly complained of the following.

- Disproportionate impact vis-a-vis cost, manpower, loss of production, etc.
- Multilevel reporting is confusing; overlapping lists bewilder many small companies and add to likelihood of mistakes
- Difficulty in determining latitude and longitude
- EPA's estimate of time required to fill out Form R is way off the mark. Companies have had to hire engineers and cancel production to do this project. Some small companies have spent in excess of several hundred hours preparing the emissions data for Form R.
- Some non-chemical companies have had to hire outside engineers and attorneys
- EPA hotline is impossible to get through. (EPA concedes that they get over 300 calls a day and cannot expand lines due to OMB regulations and lack of trained staff)

- EPA staff at the national (1-800-535-0202) hotline give entirely different answers to technical questions than their Section 313 colleagues at the regional EPA offices
- Many companies in the Pennsylvania-Ohio-New York area were told that the Form R and Instruction booklet were out of print and that there was a 4-6 week wait. *

* Even if the publication was available through a Cincinnati publication center, this misinformation caused additional confusion and frustration.

Outreach/Education:

NAM Activities:
The NAM and 13 other associations held 6 joint Title III compliance workshops in cooperation with the EPA in 1987. These workshops had over 3,000 attendees. This same cooperative industry group later assisted in a National Governors Association (NGA) meeting for LEPCs and SERCs in Washington, DC.

The NAM mailed monthly reminders to thousands of companies for four months. NAM's "Briefing" (weekly circulation 24,000) carried five stories on SARA, three of which specifically covered Form R. Additionally, the NAM sent 8,000 direct mail letters to small companies in SIC codes 20-39.

NAM member companies have been encouraged to cover the costs for outreach/educational and organizational meetings for the SERCs and LEPCs. Many of the larger companies have held such programs throughout the country. One larger consumer goods company has spent approximately $1 million dollars on reporting and community outreach. This company undertook an extensive community outreach program involving the company's employees, neighbors, customers, and neighboring companies. The company estimated they committed 36,000 man-hours at approximately $40-65.00 an hour from the engineering staff alone. Another company reported that Form R required "eight man-years" to complete.

The Michigan Manufacturers Association, which is affiliated with the NAM through the National Industrial Council (NIC), planned nine Title III compliance workshops utilizing retired engineers from Dow Corporation's SERV Program. However, these workshops are 60-90 days behind schedule because ICF, the EPA contractor for national training, failed to train EPA personnel until late May.

In fact, the Form R "experts" offered a training program for manufacturers on May 12, but weren't themselves trained until late May. Some industry attendees of the May 12 EPA meeting felt the program speakers were not technically prepared.

To the NAM's regret, the EPA contracted out to consulting firms for Form R workshops without adequate notice to EPA's Office of External Affairs or the regional offices. Had this information been made available, the NAM would have publicized the availability of technical assistance. In fact, the NAM learned of several workshops within two days of the program and received conflicting information on the workshops from the national EPA hotline, the regional office, and ICF, an EPA contractor company. This lack of coordination is certainly one of the greatest failures under the SARA program.

NAM Recommendations for a Better Implementation of SARA:

1. Flexibility to EPA for lenient enforcement action against small companies showing good faith compliance efforts on emission reporting given the outreach problems, inadequate hotlines, and lack of technical guidance documents.

2. Reprinting and adequate distribution of the following EPA guidance documents:

   A. "Toxic Chemical Release Inventory Reporting Form R and Instructions" (EPA 560/4-88-005).
   B. "Title III List of Lists" (unavailable according to SARA 313 hotline)
   C. "Estimating Releases and Waste Treatment Efficiencies for the Toxic Chemical Release Inventory Form" (out of print for almost 4 weeks. Available through GPO for $11.00 by check only.)
   D. "Questions and Answers" publication (numerous calls to EPA 313 hotline by both NAM member companies and NAM staff failed to obtain any copies of this very useful publication)
   E. "Industry Specific Technical Guidance Documents" (18 industry sectors) (unavailable through Section 313 hotline or through EPA staff

Note: The only publication widely available to NAM member companies is the "Emergency Planning and Community Right-to-Know Act"; "Section 313 Release Reporting Requirements" (EPA 560/4/88-001). However, this publication was issued late in February 1988 and does not adequately cover Form R.

3. Continued compliance workshops with the assistance of other industry groups such as NAM, National Federation of Independent Business (NFIB), U.S. Chamber of Commerce, etc.

   The EPA should consider mailing more widely to small companies by using Dun and Bradstreet numbers, SIC codes, manufacturers, directories, and other identification methods. To the EPA's credit, the statute's unrealistic timeframes and lack of funds for training have hindered the EPA's coordination and outreach activities.

However, the NAM cannot overlook the EPA's failure to fully educate the great mass of industry which has not been fully apprised of the law. The resulting emissions reporting errors (in Form R) will merely be placed in the data bank (when in place in 1989) and skew the data. Without better outreach, the 1989 emissions data may be of little value to the public in terms of accuracy or equity.

It is for this reason the NAM would prefer many Title III programmatic decisions be made by rulemaking rather than Congress. It is unfortunate that Congress left little flexibility to the EPA in implementing SARA Title III.

4. Enforcement: The NAM believes the EPA must announce its comprehensive enforcement strategy. However, any enforcement action must take into account the limited education and technical advice offered by the EPA. The NAM supports a strong enforcement policy for willing noncompliance.

5. Data Management: The NAM hopes the EPA will have the data available through its database by spring of 1989. However, such data is clearly not understandable to the lay person. The data should be free of errors and must be double checked by the EPA.

6. Risk Management: Risk Management can only be successfully undertaken by making clear and understandable the risk and dose/exposure information for the general public. In the view of the NAM, the EPA has the authority to make useful application of health effects information. As with all scientific data, the materials should be peer reviewed. The materials should be made available and should be understandable to citizens with little scientific background. A failure to coordinate such information could result in further confusion.

The NAM appreciates this opportunity to provide detailed comments addressing the problem areas of Title III. The organization feels compelled to identify the shortcomings of the program given the impact on the thousands of small manufacturers which have received a disproportionate regulatory responsibility. The NAM remains available to further discuss the program and solutions in the future whether with Congress or officials at the U.S. Environmental Protection Agency.